

## APPELLATE CIVIL

Before Falshaw and Kapur, JJ.

M/s. GORDHAN DASS BALDEO DASS,—Appellant

v.

THE GOVERNOR-GENERAL IN COUNCIL,—Respondent

Regular Second Appeal No. 1084 of 1947.

*Railway Administration—Servant—Misconduct—Clerical error of Railway servant resulting in wrongly entering the mark on the consignment—Error due to slip of pen under pressure of work—Whether amounts to “Misconduct”.*

1954

Sept. 21st

Held, that a mere clerical error in wrongly entering the mark on the consignment could not possibly amount to misconduct which implies some degree of *Mens rea* on the part of the person concerned or at any rate a very grave degree of negligence or serious failure to carry out instructions or comply with regulations. There is no justification for the view that the word “Misconduct” in this context has any wider meaning than that ordinarily ascribed to it.

*Secretary of State v. Allah Ditta Mohammad Amin* (1), followed, *Secretary of State v. Madhuri Das-Narain Das* (2), dissented.

*Second Appeal from the decree of Shri S. B. Kapoor, District Judge, Delhi, dated the 1st March, 1947, reversing that of Ch. Mohd. Abdullah Cheema, Sub-Judge, 1st Class, Delhi, dated the 31st July, 1946, and dismissing the plaintiff's suit.*

F. C. MITTAL, for Appellant.

N. L. SALOOJA,—for Respondent.

---

(1) A.I.R. 1930 Lah. 120

(2) A.I.R. 1933 All. 477

## JUDGMENT

Falshaw, J.

FALSHAW, J.—These two appeals arise out of a suit instituted by the appellant firm Gordhan Dass-Baldeo Dass of Delhi as long ago as 1944 claiming Rs. 3,500 as damages from the Governor-General in Council, though five other firms of Delhi were also impleaded as defendants. The plaintiff was granted a decree by the trial Court for Rs. 2,681-1-0 subject to certain conditions regarding the goods which were lying with the plaintiff. Two appeals were preferred in the Court of the District Judge, one by the Government against the above decree and one by the plaintiff for the balance of Rs. 818-15-0 which had been disallowed by the trial Court out of the plaintiff's claim. The learned District Judge dismissed the plaintiff's appeal and accepted that of the Government with the result that the plaintiff's suit was dismissed *in toto*. The plaintiff filed two separate appeals in the High Court at Lahore. Apparently these appeals were filed on different dates and one of them, namely No. 1204 of 1947, which challenged the dismissal of the plaintiff's appeal for the disallowed portion of his claim, was clearly barred by time, and is liable to be dismissed on that ground alone.

Briefly the facts of the case are that on the 22nd of February, 1943, the Arvind Mills of Ahmedabad despatched by rail two consignments of cloth each consisting of two bales to two different firms at Delhi. One of the consignments was covered by Railway Receipt No. 21296 and the Railway Mark given to the consignment was 7238/2 while the other consignment was covered by Railway Receipt No. 21295 and the Railway Mark 7236/2. By mistake on the part of the Assistant Goods Clerk at Ahmedabad the Railway

Mark 7238 was entered in both the Railway Receipts. The plaintiff firm purchased the consignment covered by Railway Receipt No. 21296 of which the Railway Mark was really 7238/2 from the consignee before delivery was taken. However, before representative of the plaintiff firm went to the Goods Office to take delivery of the consignment thus purchased the consignment marked 7238/2 had already been delivered to the consignee of the consignment really marked 7236/2 but wrongly entered in the relevant receipt under the former number. There was some difficulty about removing the consignment by the plaintiff's representative, but according to the evidence he insisted that the consignment which had remained undelivered was the proper one, and the difficulty was surmounted by altering the number in the Railway Receipt to 7236/2.

M/s. Gordhan  
Dass  
Baldeo Dass  
v.  
The Governor-  
General in  
Council  
—  
Falshaw, J.

The suit was instituted in January, 1944 by the plaintiff against the Government as representing the B.B. and C.I. Railway and against the firm which had wrongly taken delivery of the consignment actually purchased by the plaintiff, and also the firms through whom the plaintiff had purchased the consignment. The plaintiff claimed the full value of the consignment purchased by him and wrongly delivered to the firm Messrs A. R. Sethna. According to the terms of the risk note under which the consignment purchased by the plaintiff was carried by the railway, the plaintiff was only entitled to claim damages against the railway on proof of misconduct by any servant of the railway. The trial Court held that the mistake of the Goods Clerk in wrongly entering the Railway Mark of one of the consignments in the Railway Receipt amounted to misconduct, and granted the plaintiff firm a decree for the price of

M/s. Gordhan the goods consigned to him as shown in the invoice,  
 Dass subject to certain adjustment as regards the goods  
 Baldeo Dass lying with the plaintiff which were really con-  
 v. signed to the firm Messrs A. R. Sethna. The  
 The Governor- learned District Judge held that the clerk's mis-  
 General in take did not amount to misconduct and therefore  
 Council held that the plaintiff's suit was liable to be dis-  
 Falshaw, J. missed altogether.

The only question before us is whether the trial Court or the learned District Judge took the correct view regarding the meaning of the word "misconduct". In the absence of any authority, I should certainly not be inclined to hold that a mere clerical error of this kind could possibly amount to misconduct, which in my opinion implies some degree of *mens rea* on the part of the person concerned or at any rate a very grave degree of negligence or serious failure to carry out instructions or comply with regulations. I can see no reason for not believing the evidence in the present case that the mistake was due to a mere slip of the pen committed under pressure of work and it is obviously the sort of mistake which anybody might have made in the circumstances.

The nearest approach to an authority in his favour which the learned counsel for the appellant could produce was *Secretary of State v. Madhuri Das-Narain Das* (1), a decision by Niamatullah, J., which deals with a case in which the number of a consignment had been wrongly entered in the Railway Receipt. The trial Court had held that the mistake of the clerk concerned amounted to misconduct but in deciding the case Niamatullah, J., held that under the particular

---

(1) A.I.R. 1933 All. 477

risk note involved in that case it was not necessary for the plaintiff to establish misconduct, and whatever he said on this point was, therefore, obiter. He observed—

“I have taken a different view of the risk note B and do not think it necessary to hold that the mistake amounted to a misconduct. I may, however, note that the word ‘misconduct’ occurring in risk note B is of wider import than the popular sense in which that word is used. Want of proper care and caution may amount to misconduct within the meaning of the risk note B. A mistake in the preparation of the railway receipt which throws doubt on the identity of the consignment to which it relates is a misconduct in the above sense.”

With the utmost respect, I cannot see what is the justification for the view that the word “misconduct” in this context has any wider meaning than that ordinarily ascribed to it, and on this point I am inclined to agree with the view expressed by Hilton, J. in case *Secretary of State v. Allah Ditta Mohammad Amin* (1) as follows:—

“In my judgment the phrase ‘misconduct of the Railway Administration’s servants’ can only have the second meaning, which involves the passing of a moral judgment on the conduct of the person concerned, however slight may be the lapse from rectitude which provokes it. I do not, therefore, accept the view of the Courts below that misconduct and

M/s. Gordhan  
Dass  
Baldeo Dass  
v.  
The Governor-  
General in  
Council  
Falshaw, J.

(1) A.I.R. 1930 Lah. 120

M/s. Gordhan  
Dass  
Baldeo Dass

mismanagement are synonymous terms  
for the purposes of the risk note."

v.  
The Governor-  
General in  
Council  
—  
Falshaw, J.

The other cases which deal with the meaning of the word 'misconduct' do not appear to me to be very helpful since they deal, generally speaking, with cases of negligence in the actual handling of goods, and I would certainly agree that in some circumstances negligence in handling goods can amount to misconduct. I do not, however, consider that a mere clerical mistake by a clerk of the kind involved in the present case can be held to amount to misconduct, and I would accordingly dismiss these appeals but leave the parties to bear their own costs.

Kapur, J.

Kapur, J.—I agree.

#### APPELLATE CIVIL

*Before Bhandari, C.J. and Falshaw, J.*

MESSRS INDO EUROPEAN MACHINERY, CO., DELHI,—  
*Appellant*

v.

THE COMMISSIONER OF INCOME-TAX, DELHI,—  
*Respondent*

**Civil Reference No. 8 of 1952.**

1954

Oct. 14th

*Firm—Credit entry in bank account of a partner—Burden of proof of nature of entry—on whom lies—Finding by Income-tax authorities that entry represented profit from undisclosed sources—Finding not based on material on record but on mere suspicion—Finding, validity of.*

*Held*, that where there is a credit entry of an amount in the Bank account of one of the partners of a firm, there is a duty on the firm to explain the nature of the credit