

**KULATUNGA, LABOUR OFFICER, COLOMBO SOUTH**

v.

**DODANGODA AND OTHERS**

COURT OF APPEAL.

ABEYWARDENA, J. AND P. R. P. PERERA, J.

C.A. No. 39/84–M.C. COLOMBO No. 25919/4.

SEPTEMBER 2, 1986.

*Industrial Dispute—Arbitration—Repudiation of arbitrator's award—Industrial Disputes Act, Chapter 131, as amended, (sec. 40 (1)(a), sec. 43(1), sec. 43(4), sec. 20(2)(a))—When will the repudiated award cease to have effect?*

An award dated 29.10.1981 was made by an arbitrator in terms of sec. 17 of the Industrial Disputes Act. This award was gazetted on 27.11.1981. The accused-respondents who are the employers repudiated the award by written notice to the commissioner, which was gazetted on 12.2.1982. On 19.5.1982 plaint was filed in the Magistrate's Court charging the accused-respondent, with committing an offence, under sec. 40(1)(a) of the Industrial Disputes Act as amended, for non-compliance with the arbitrator's award. A preliminary objection was raised, on behalf of the accused-respondents, that the award had lapsed with the repudiation of it by the accused-respondents and therefore the court had no jurisdiction to order the accused-respondents to comply with the award. The learned Magistrate upheld the objection and acquitted the accused-respondents. The complainant appealed against the order of the Magistrate acquitting the accused-respondents.

**Held—**

In terms of sec. 20(2)(a), notwithstanding a notice of repudiation, an award made by an arbitrator is binding on the parties to the award for a minimum period of 12 months. During the period specified in sec. 20(2)(a), any person who acts in violation of such an award would be contravening the provisions of section 40(1)(a), of the Industrial Disputes Act, and would thus be guilty of an offence punishable under sec. 43 (1) read with section 43(4) of the Act.

At the time the plaint in this case was filed the accused-respondents were bound by the award of the arbitrator.

**Case referred to:**

*V. Thirunavakarasu v. K. E. W. F. Siriwardena and Others – S/C Appeal No. 33/80, S.C. Minutes of 12.3.1981.*

APPEAL from an order of acquittal by the Magistrate, Colombo.

P. A. Ratnayake, State Counsel for appellants.

Accused-respondents absent and unrepresented.

October 24, 1986.

**PERERA, J.**

The accused-respondents in this case were charged in the Magistrate's Court of Colombo, with committing offences under the provisions of section 40(1)(a), of the Industrial Disputes Act, Chapter 131, as amended for non-compliance with an arbitrator's award dated 29.10.1981, made under the provisions of section 17 of the Industrial Disputes Act, by failing to deposit a sum of Rs. 23,381.92 cts. with the Assistant Commissioner of Labour, Colombo South—an offence punishable under section 43(1) read with section 43(4) of the said Act.

The learned Magistrate upholding a preliminary objection raised on behalf of the accused-respondents held that the amount due on the Arbitrator's award dated 29.10.1981, cannot be recovered from the accused-respondents as the award had lapsed, with the repudiation of the award by the accused-respondents and in those circumstances, the court had no jurisdiction to order the respondents to comply with the award, and acquitted the accused-respondents. It is against this order, that the complainant-appellant has lodged the present appeal. This appeal against the order acquitting the accused-respondents has been filed by the complainant-appellant, having obtained the sanction of the Attorney General in terms of section 318 of the Code of Criminal Procedure Act No. 15 of 1979.

The industrial dispute in question has been referred to an arbitrator by the Commissioner of Labour, in terms of section 3(1)(d) of the Industrial Disputes Act. The Arbitrator had made his award on 29.10.1981, and it was published in the Ceylon Government Gazette of 27.11.1981. The award was to the effect that the employers who are the accused-respondents in this case, should re-instate the workers concerned and should also deposit a sum of Rs. 23,381.92 cts., with the Assistant Commissioner of Labour, Colombo South—to be distributed among the workers concerned. The accused-respondents had failed to comply with this award, and had repudiated it. The repudiation was published in the Ceylon Government Gazette of 12.2.1982. The present case had been filed,

for non-compliance of that part of the award, which required the accused-respondents to deposit a sum of Rs. 3,381.92 cts., with the Assistant Commissioner of Labour, Colombo South.

It is important to note that the repudiation notice relating to this award had been published on 12.2.1982, and the plaint in the present case has been filed in the Magistrate's Court of Colombo, on 19.5.1982.

Section 20(2)(a) of the Industrial Disputes Act, Chapter 131, provides thus:

*"The award to which such notice relates shall cease to have effect upon the expiration of three months immediately succeeding the month in which the notice (of repudiation) is so received by the Commissioner or upon the expiration of 12 months, from the date on which the award came into force as provided in section 18(2) whichever is the later."*

In terms of this section an award has a guaranteed period of operation of twelve months.

It is clear from the facts set out above, that the plaint in the present case has been filed in the Magistrate's Court of Colombo, on 19.5.1982, at a time, when the award made by the Arbitrator was still in force, as it had been filed within one year from the date on which the award came into force which was the later date in terms of section 20(2)(a) of the Act.

Section 40(1)(a) of the Industrial Disputes Act provides that—

*"Any person who being bound by a collective agreement, or by a settlement under this Act, or by an award of an arbitrator or an Industrial Court or a Labour Tribunal, does any act or aids, abets, or incites the commission or any act in contravention of, or fails to comply with any of the terms of conditions of that agreement, settlement or award, shall be guilty of an offence."*

Learned State Counsel, who appeared for the appellant in this case, submitted in these circumstances that at the time the plaint was filed in this case, the accused-respondents were bound by the award of the Arbitrator, but had failed to comply with the terms and conditions of the award and were therefore guilty of an offence punishable under section 43(1) read with section 43(4) of the Industrial Disputes Act.

State Counsel also urged that even where an award is repudiated if a party acts in violation of the award during the period specified in section 20(2)(a) of the Act, such party commits an offence under section 40(1)(a) of the Industrial Disputes Act.

In support of his contention, learned State Counsel invited the attention of this court to certain observations made by Wanasundera, J. in *V. Thirunavakarasu v. K. E. W. F. Siriwardena and Others*, as follows:

“..... in addition to that the award will be binding on the parties and is made operative in the character of an award for a minimum period of 12 months. This means that there are some special sanctions including criminal sanctions to back the award in its character as an award. During that period, and in respect of that period when the award will subsist all rights and liabilities pertaining to the award in its character as an award can be enforced as an award.”

I am in agreement with the submissions made by State Counsel on this question, and I hold that during the period specified in section 20(2)(a) of the Industrial Disputes Act, any person who acts in violation of such an award would be contravening the provisions of section 40(1)(a) of the Industrial Disputes Act, and would thus be guilty of an offence under this Act, which would be punishable under section 43(1) read with section 43(4) of the said Act.

I am of the view therefore, that the learned Magistrate was in error when he held that with the repudiation of the award such award ceased to have effect, and that the court had no jurisdiction to order the accused-respondents to comply with such award.

We therefore set aside the order of the learned Magistrate and allow the appeal, and remit this case back to the Magistrate's Court. The Magistrate is directed to proceed with the trial in this case and make an order in accordance with the law.

**ABEYWARDENA, J.** – I agree.

*Appeal allowed.*