

IN THE FIJI COURT OF APPEAL

Appellate Jurisdiction

Civil Appeal No. 8 of 1985

Between:

RAM SAMY NAIDU s/o
Govind Raj Naidu

Appellant

- and -

1. THE MINISTER FOR WORKS
AND COMMUNICATIONS
2. THE ATTORNEY GENERAL OF
FIJI

Respondents

D.C. Maharaj for the Appellant
S.P. Sharma & Jone Madraiwiwi for the Respondents

Date of Hearing : 15th July, 1985.

Delivery of Judgment : 22nd July, 1985.

JUDGMENT OF THE COURT

Roper, J.A.

This is an appeal from the judgment of Kearsley J. in which he dismissed the Appellant's claim for damages and other relief. The Appellant alleged that he had been wrongfully dismissed from the Public Works Department, where he had held the position of Sirdar while the Department claimed that he had been dismissed for misconduct.

The basic facts are that the Appellant who had been 14 years with the Department put in a claim for wages for 10 hours worked on Saturday the 5th July, 1980

when he had not worked on that day. The Appellant has never claimed that he did work. His explanation was that he had worked two hours overtime on each of the five week days preceding the Saturday, for which he had made no claim, and had been authorized by the area road supervisor, a Mr. George Morris, to make a claim as though the 10 hours had been worked on Saturday. Because of the different overtime rates that applied the Appellant received more for the claimed 10 hours work on Saturday than he would for two hours on each weekday, but on the Appellant's evidence the inference is that the surplus was to compensate for the fact that the Department had not provided him with transport to his home, which was 30 miles away, on a fortnightly basis, as it was required to do.

Mr. Morris denied that there had been any such arrangement as alleged by the Appellant. It came down to a question of credibility, as Mr. Madraiwiwi conceded, and the following passage from the judgment indicates clearly that Kearsley J. came down on the side of the Appellant :-

"Although it was emphatically contradicted by Morris, I am by no means convinced that the plaintiff's story was untrue. As Morris readily conceded, the plaintiff must have known that his claim would be seen by another sirdar and by Morris himself both of whom knew that he had not worked on the Saturday. I therefore think it unlikely that the plaintiff would have put in that claim for Saturday work if it had not been sanctioned by Morris."

Having accepted that the Saturday claim was sanctioned Kearsley J. went on to hold that the Appellant's

claim was still "patently dishonest" because of the higher rate the Appellant received on the basis of Saturday overtime.

We cannot accept the Learned Judge's reasoning. Once it was accepted that a claim for 10 hours work on Saturday was authorized it surely means that the consequences which flowed from such a claim must also have been authorized.

The appeal is allowed and there will be a declaration that the Appellant was wrongfully dismissed. As there is insufficient evidence before us to determine the issue of damages and the other relief sought by the Appellant the matter is referred back to the Supreme Court for consideration of those issues should it prove necessary.

The Appellant is to have costs in this Court and the Court below as taxed by the Registrar if the parties cannot agree.

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Vice President

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Judge of Appeal

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Judge of Appeal