

IN THE FIJI COURT OF APPEAL
CIVIL APPEAL NO. 78 OF 1986

Between:

CIVIL AVIATION AUTHORITY OF FIJI

Appellant

- and -

FIJI PUBLIC SERVICE ASSOCIATION

Respondent

Mr. Q. Bale for the Appellant
Mr. R. Chandra for the Respondent

Date of Hearing: 11th May, 1988

Delivery of Judgment: *24 June* 1988

JUDGMENT OF THE COURT

The appellant sought by originating summons in the court below the following two declarations:-

- "(a) that the provisions of Aerodromes Fire Service Regulations 1965, as amended, governs the medical examination requirements of the subordinate officers of the Rescue Fire Service personnel in the Plaintiff Authority;
- (b) that the medical examination of officers above the subordinate ranks of the Rescue Fire Service personnel in the Plaintiff Authority is conducted in accordance with the requirements issued by the International Civil Aviation Organisation (ICAO) of which Fiji is a Member State and which the Plaintiff Authority has adopted,

the provisions of the Civil Aviation Act Cap. 174, the Civil Aviation Authority of Fiji Act 1979 and Regulations thereunder and the Manual for Designated Medical Examiners issued by the Plaintiff Authority".

Dyke J. dismissed the summons. His reasons for doing so and comments made by him in his judgment form the basis of virtually every ground of appeal. In its notice of motion and grounds of appeal the Authority now seeks from this court two declarations in different form but relating to matters mentioned in the two declarations originally sought. The declarations now sought are as follows:-

- "(a) the medical examination requirements for subordinate officers of the fire services personnel employed by the Appellant Authority are provided for in Regulation 9 as amended by Legal Notice No. 124 of 1971 of the Aerodromes Fire Service Regulations 1965; and
- (b) the medical examination requirements for officers above the subordinate ranks are provided for in the Manual for Designated Medical Examiners issued by the Appellant Authority under the provision of Section 9 of the Civil Aviation Authority of Fiji Act (No. 18 of 1979)."

The court enquired of Mr. Bale whether the Authority can now seek declarations in different form and whether we can grant the relief it now seeks.

Mr. Bale argued that the same issues were involved and we could grant the declarations. The fact that the Authority saw fit to change the form would indicate that there were advantages to it to do so. While the two declarations (a) are in some respects similar the two declarations (b) are materially different and raises one important issue which was not in issue in the court below.

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We refer to the manual for Designated Medical Examiners "issued by the appellant authority under the provision of section 9 of the Civil Aviation Authority of Fiji Act (No. 18 of 1979)."

The reference to section 9 of the Civil Aviation Authority of Fiji Act indicates confusion on the part of the Authority and a failure to understand section 9.

Section 9 is a very short section. It states:-

"9. Subject to the provisions of this Act, the authority shall have power to regulate its own procedure".

This is a provision usually found in Acts setting up a statutory authority. Apart from specific provisions the law may impose on an Authority, such as to its composition and functions, it does not normally set out to tell an Authority how to operate or conduct its meetings or run its business. Section 9 allows it to "regulate its own procedure".

Section 9 does not, as the authority believes, empower the authority to make regulations. It does however under section 34 have limited authority with the approval of the minister to make certain by-laws none of which relate to medical examinations of personnel.

It also has powers under section 29 to prescribe regulations regarding fees or charges.

There are no powers provided in the Civil Aviation Authority of Fiji Act enabling the Authority to make regulations regarding medical examinations for its personnel.

Throughout the dispute, before the court below and before this court, the Authority has not appreciated the legal position and appears to be confused. Its attempt to argue that section 9 of the Civil Aviation Authority gives the Authority power to make regulations or confers legislative authority on the manual it issued indicates either its confusion or misapprehension about the scope of the section. No one in the court below, including the learned Judge has adverted to the fact that Mr. M. P. Chaudhary in his affidavit in reply admitted paragraph 3 of Mr. J. Koroitamana's affidavit in support of the relief sought on the originating summons. Mr. Koroitamana stated in paragraph 3 as follows:-

"That prior to and after the creation of the plaintiff Authority the requirements for medical examination of the subordinate officers of the Rescue Fire Service personnel are governed by the provisions of the Aerodrome Fire Service Regulations 1965 as amended".

Comparing this allegation with the Declaration (a) originally sought indicates that the declaration is actually a paraphrase of that statement. The only difference is that the declaration refers to subordinate officers in the Authority whereas the statement refers to Rescue Fire Service personnel. Neither the Authority nor the learned Judge appear to have appreciated the point raised by the Association which is set out in paragraph 8 of Mr. Chaudhary's affidavit which is as follows:-

"That I repeat paragraphs 1 to 7 hereof and further say that the Defendant Association is not refusing to any medical examination of its Rescue Fire Service Personnel. The Defendant Association is and always has been prepared for its members in the Rescue Fire Service to be medically examined provided such examination is conducted on the basis of the criterion applied before the issuance of the said manual by the Plaintiff Authority and I

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further say that the said criterion was determined by the Medical Department of Fiji at the instance of the Ministry of Civil Aviation".

What the Authority was seeking to impose were regulations which it had framed. The Association did not consider the Authority could legally do so. Belatedly the Authority has woken up and this is one reason for attempting to change the form of the declarations sought.

While we do not entirely agree with the reasons the learned Judge gave for refusing to grant the declarations sought on the application before him, we are of the view that the appellant could not hope to have succeeded in view of the nature of the declarations sought and its inability to appreciate the legal issues involved.

The Authority failed to appreciate that the issue in dispute was whether the Authority was empowered to make regulations or issue directions regarding medical examinations. It sought a declaration which the Association never disputed. If this is not a correct statement it certainly admitted that the Aerodrome Fire Services Regulations 1968 are still in force and govern Rescue Fire Service personnel.

One of the basic failures is the Authority's misinterpretation of Regulation 9 which is in the following terms:-

"2. Regulation 9 of the Aerodromes Fire Service Regulations is revoked and replaced by the following Regulation:-

9. - (1) Every subordinate officer shall be passed medically fit by a Government medical officer on such medical examination as the Director may direct prior to the appointment

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or reappointment for any period and when so directed by the Director during the service of such subordinate officer.

- (2) The medical examinations referred to in the last preceding paragraph shall include an electrocardiograph which shall be required to be passed by each subordinate officer -
 - (a) in the case of appointment or reappointment, immediately prior thereto;
 - (b) upon reaching the age of thirty-five years;
 - (c) upon reaching the age of forty years and until reaching the age of fifty years in every alternate year; and
 - (d) upon reaching the age of fifty years annually thereafter.
- (3) The normal retiring age of any member of the Service shall be sixty years".

The Aerodrome Fire Service Regulations are still in force and are deemed to have been made under the Civil Aviation Act by virtue of section 19 of the Interpretation Act which provides as follows:-

"19. Where any Act or part of an Act is repealed, subsidiary legislation issued under or made in virtue thereof, shall, unless a contrary intention appears, remain in force, so far as it is not inconsistent with the repealing Act, until it has been revoked or repealed by subsidiary legislation issued or made under the provisions of such repealing Act, and shall be deemed for all purposes to have been made thereunder".

The Civil Aviation Act (12 of 1976) repealed the Aerodromes Ordinance under which the Regulations were made.

Whether the regulations apply in toto or are modified in any way by the Civil Aviation Act is a matter on which counsel has not addressed us. Mr. Bale confined his remarks on Regulation 9 to the fact that it was still in force.

The Authority has not carefully considered Regulation 9. The Association's case, very briefly adverted to by Mr. Chandra now is that the collective agreement entered into by the parties deals with medical examinations and that is the end of the matter and Regulation 9 can not override what the parties have agreed.

That is a proposition which is completely untenable. If Regulation 9 has any legal effect as regards the Fire Service, no agreement of the parties can override the legislative provisions. If, however, the Regulations exist but do not apply to personnel appointed by the Authority that is an argument that Mr. Chandra could have raised but did not. He did not refer to the fact that the Association admitted the Regulations had application so far as the Rescue Fire Service personnel were concerned.

There are no provisions regarding medical requirements in the collective agreement other than the "special medical examination" already referred to. The use of the word "special" would seem to indicate that there are or can be other medical examinations. Those would appear to be those which can be directed by the Director of Civil Aviation under Regulation 9.

The parties could have provided for medical examinations when negotiating the terms of the collective agreement but did not do so. We cannot, however, agree with the learned Judge that the omission to do so implied that the Regulations not specifically retained were no longer applicable.

Regulation 9 does not give the Authority any power to order an employee to present himself for a medical examination or dictate the nature or extent of such examination. It is the Director of Civil Aviation who directs the nature of such medical examination which must be carried out by a Government medical officer.

The Director is not an officer of the Authority. On the appointment or re-appointment of an employee the Authority has very wide powers under the Act and can dictate what medical examination an applicant has to undergo. It does not have the power to dictate that he have the periodic examinations that Regulation 9 envisages. It is for the Director to direct that personnel be medically examined, if he has not already done so, and if Regulation 9 covers personnel appointed by the Authority. The Association admits it does but the learned Judge held the contrary view. In his judgment the learned Judge said:-

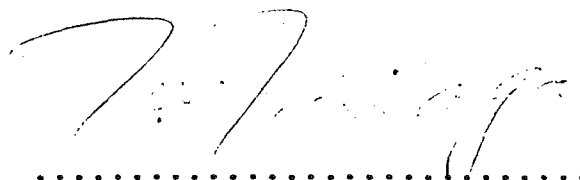
" Now what this Court is being asked to decide firstly is whether the Aerodrome Fire Service Regulations still apply to Fire Service Personnel. According to the Regulations themselves they apply to the Aerodrome Fire Service which was enrolled by the then Governor in accordance with regulation 4. What we have now is a fire service consisting of members appointed by the CAAF".

Neither counsel has addressed us on this issue and we do not propose to consider it. Any doubt about the matter can be resolved by the Minister making regulations to give effect to the Authority's requirements which are designed to promote efficiency and safety in aerodromes in Fiji.

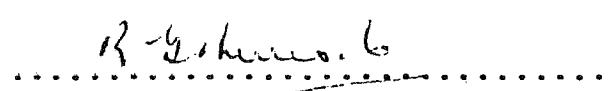
The appeal is dismissed.

While costs normally follow the result we are not disposed to awarding the successful respondent costs. Mr. Chandra's contribution was of no assistance to the court. He merely put forward the proposition which we have labelled completely untenable. It was also an argument on which the Association relied in the court below.


We consider each party should meet its own costs of this appeal and we so order.



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President, Fiji Court of Appeal



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Justice of Appeal



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Justice of Appeal