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IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. 9 OF 1993

(High Court Civil Action No. 1140 of 1985)

BETWEEN:

THE DIRECTOR OF AGRICULTURE
(MINISTRY OF PRIMARY INDUSTRIES)

APPELLANT

-and-

NARESH CHAND

RESPONDENT

Mr. Daniel Singh for the Appellant
Respondent In Person

Date of Hearing : 5th November, 1993
Date of Delivery of Judgment : 9th November, 1993

JUDGMENT OF THE COURT

On 30 October 1992 judgment was given in the High Court in favour of the Respondent for a total of \$1040 by way of damages for the wrongful dismissal of the Respondent from his employment; of that sum \$540 was expressed to be for loss of wages, and the balance of \$500 for breach of contract. The Appellant has appealed against the award of the latter sum of \$500.

On behalf of the Appellant reliance was placed upon the long-standing decision of the House of Lords in Addis v Gramophone Co. Ltd. (1909) AC 488 in which it was held that the measure of damages recoverable for wrongful dismissal cannot be more than the amount of remuneration which should have been paid

and that no additional sum can be claimed on grounds of humiliation or injury to personal dignity caused by sudden termination of employment.

A qualification to this principle is to be found in the more recent case of Cox v Philips Industries (1976) 3 ALL E R 161 in which it was accepted that damages may be recovered for depression, vexation and frustration leading to ill-health, if these were in the contemplation of the parties in the event of breach of the contract.

In the present case, however, there was no allegation in the Statement of Claim as to any such consequence from the dismissal and no evidence was adduced directed to such a matter.

We are of the opinion that the Judge erred in making the award of \$500 and accordingly the appeal must be allowed and that part of the judgment must be set aside.

As to the costs on the appeal, counsel for the Appellant offered to forego making any application, and accordingly there will be no order as to costs.

In the High Court the Judge ordered the costs of the Respondent (Plaintiff) to be taxed if not agreed. We are informed by counsel for the Appellant that an offer of \$200 for costs was made but that there has been no response to that offer. The Respondent is now unrepresented and we think it proper to fix a sum for his costs in the High Court. We fix those costs at \$300 and direct that this sum be paid to him personally.

Michael M. Helsham

 Mr. Justice Michael M. Helsham
President Fiji Court of Appeal

Peter Quilliam

 Sir Peter Quilliam
Justice of Appeal

Gordon Ward

 Mr. Justice Gordon Ward
Justice of Appeal