

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. ABU0005 OF 1994

(High Court Civil Action No. 17 of 1993)

BETWEEN:TROPICAL FOOD PRODUCTS
MANUFACTURING (FIJI) LTDAPPELLANT

-and-

THE MINISTER FOR LABOUR,
INDUSTRIAL RELATION & INFORMATIONRESPONDENT

Mr. G. P. Lala and Mr. M. Narsey for the Appellant
Mr. J. Udit for the Respondent

Date and Place of Hearing : 18th August, 1994
Date of Delivery of Judgment : 26th August, 1994

JUDGMENT OF THE COURT

At the commencement of the hearing of this appeal the appellant sought leave to adduce further evidence by way of affidavit pursuant to Rule 22 of the Fiji Court of Appeal Rules. The application was opposed by the respondent.

Following legal submissions the application was abandoned and withdrawn by counsel for the appellant.

This is an appeal against the decision of Byrne J. refusing the appellant leave for Judicial Review.

On the 30th June 1993 a new wages structure for the Manufacturing Industry was promulgated. It was published in the Fiji Republic Gazette Supplement on the 16th July 1993. This was

known as the Wages Regulation (Manufacturing Industry) Order 1993 and came into force on the 27th July 1993.

The appellant is an employer within that Industry and is therefore bound by the new wage structure. On the 1st September 1993 the appellant applied firstly for a writ of certiorari under Order 53 of the High Court Rules for Judicial Review of that decision made by the respondent and secondly that the enforcement of the order be stayed. The grounds for which relief was sought, included allegations that the order was arbitrary, unfair and improperly made; it was not supported by the necessary investigation; it failed to take current economic conditions into account; and that the appellant was denied an opportunity to address the respondent on issues of concern to it - as a consequence the appellant alleges that there were serious breaches of the principles of natural justice.

The sequence of events prior to and following the 27th July 1993 order are best identified by the following chronology:-

7th September 1981:-

Pursuant to the provisions of the Wages Councils Act and the Wages Council (Manufacturing Industry) Order 1981 a Wages Council known as the "Manufacturing Industry Wages Council" was established;

27th April 1992 and 26th January 1993:-

Members of the Manufacturing Industry Wages Council were

gazetted. For the purposes of these enquiries, the four employers representatives elected in 1992 were again elected in 1993;

11th November 1992:-

On this date a meeting of the Manufacturing Industry Wages Council was held. The four Employers Representatives were present. In the course of the meeting Mr. K. Roberts on behalf of the Employers representatives proposed that the existing rate of \$1.13 per hour be increased to \$1.50 per hour. This proposal was agreed to by the Employees representatives.

16th April 1993:-

The Manufacturing Industry Wages Council advertised that it intended to submit wage proposals to the Minister for Labour and Industrial Relations. At the same time written representations on the proposals were solicited. These were to be sent to the Council on or before the 14th May 1993.

15th June 1993:-

The Wages Council met to consider and deal with the one submission that had been filed.

30th June 1993:-

The Minister for Labour Industrial Relations and Information having made the Wages Regulations (Manufacturing Industry) Order 1993 the Council published the order on this date.

16th July 1993:-

The order was published in the Gazette on this date.

1st September 1993:-

Notice of motion filed in the High Court by the appellant seeking leave to issue Writ of Certiorari under Order 53 r.3 of the High Court Rules for Judicial Review of the decision made by the Minister of Labour, Industrial Relations and Information promulgated on the 28th day of June 1993.

28th December 1993:-

Byrne J. refused the application for leave to judicially review that decision made by the Minister of Labour, Industrial Relations and Information.

In summary therefore the increase in the wage rates proposed by the Employer representatives and accepted by the Employee representatives on the 11th November 1992 was not challenged by the appellant until the 1st September 1993.

The Legislation relevant to this challenge by the appellant

is the Wages Councils Act Cap.98. It is pursuant to the provisions of this Act that the Wages Council (Manufacturing Industry) Order was promulgated; the setting up of Wages Councils formalised; and the procedure established. It is the procedure adopted in this instance which is central to the challenge mounted by the appellant. In short it is alleged that the Wages Council failed to investigate; to enquire from; and to consult with the appellant.

The notice of appeal filed by the appellant sets out the following grounds alleging why Byrne J. erred in refusing leave to apply for judicial review viz-

- (a) the issues raised were arguable;
- (b) the application was not frivolous or vexatious;
- (c) the application was made in time;
- (d) there was sufficient public law element to require exercise of High Court's supervisory jurisdiction.

However counsel for the appellant indicated that he relied on ground (a) - the issues raised were arguable - as the real basis for the appeal. He claimed that the High Court had failed to address or had failed to adequately address this fundamental issue. It was he said a failure to afford the appellant a reasonable standard of fairness and as a consequence the normal principles of natural justice had been disregarded.

He put it this way. The Wages Council did not follow the proper procedure set out in s.8 of the Wages Councils Act Cap.98

before submitting its recommendations to the Minister; and failed to notify or adequately notify the appellant where the Councils proposals could be obtained. In order to consider those allegations it is necessary to examine the Wages Council; the procedure it adopted; and whether arising from that examination the appellant has been denied the natural justice as alleged.

The Wages Councils Act Cap.98 is described as an Act to provide for the Establishment of Wages Councils. Included in the Second Schedule to the Act is the Wages Council (Manufacturing Industry) Order which Order applies to the appellant and its employees. Under section 3 of the Wages Councils Act the Minister for Labour Industrial Relations and Information has the power to establish a Wages Council for any particular industry. The Manufacturing Industry Council was established in 1981, the members of which are appointed annually. The appellant accepts the constitution of the Wages Council representing the Manufacturing Industry and the proper appointment of the personnel that make up that Council. It is the procedure adopted by the Council that is the basis of its application to review.

What then was the procedure adopted. The secretary to the Manufacturing Industry Council Mr. Gyan Singh gave notice to all council members to attend a meeting on the 11th November 1992, an agenda for that meeting was also provided. The minutes of the meeting are detailed on page 45 of the record. They disclose that all four of the employers representatives were present. The minutes relevant to this application are as follows:-

"Minute 5/92 - Agenda Item 1 (Wage Increase)"

Mr Raman initiated discussions on the issue by saying that the existing rates were fixed in 1986. He Added that according to a decision reached at a previous Tripartite Forum, Wages Councils were to base wages rates on the equivalent of 80% of unionised rates.

He said that since 1986, unionised workers have enjoyed an accumulative total of 38.5% wage increase and had suggested that the current rates be adjusted likewise.

The chairman then allowed a 5 minutes break at the request of Mr Roberts to allow the Employees' Representatives to discuss the issue.

At the resumption, Mr Roberts revealed that the employers' representatives had suggested that the existing rate of \$1.13 per hour be increased to \$1.50 per hour.

This was agreed to by the Employees' representatives. Both parties also agreed to increase the minimum rate applicable to casual workers to 187.5 cents per hour."

Following that meeting the Council advertised its intentions; met subsequently to consider the one submission received; and then forwarded its recommendation to the Minister. In due course the Minister approved the increase in wage rates by means of the Wages Regulations (Manufacturing Industry) Order 1993.

The appellant submits this procedure is not in accordance with that required by the Wages Regulation Order and in particular section 8 sub-section 2 which states:-

"Before submitting any wages regulation proposals to the Minister, a wages council shall make such investigations as it thinks fit and shall publish, in the prescribed manner, notice of the proposals, stating the place where copies of the proposals may be obtained and the period within which written representations with respect to the proposals may be sent to the council; and the council shall consider any written representations made to it within that period and shall make such further inquiries as it considers necessary and may then submit the proposals to the Minister either without amendment or with such amendments as it thinks fit having regard to the representations:

Provided that if the council, before publishing its proposals, resolves that, in the event of no representation with respect to the proposals being made to it within the said period the proposals shall without further consideration be submitted to the Minister, the proposals shall, if no representation is so made, be submitted to the Minister accordingly."

The appellant refers in particular to the failure of the Council to make investigations; to publish the proposals as required and to state where copies of the proposals may be obtained as specified by the Act.

It is true that no formal investigation as such was undertaken by the Council. The Council representatives understood that the existing rates had been fixed in 1986 some 6 years previously; that a previous decision had agreed to fix rates at 80% of unionised rates; and that union rates had increased 38.5%. Given these facts the employers representatives suggested the existing rate of \$1.13 per hour be increased to \$1.50 per hour. This was accepted by the Employees

representative even though it represented an increase of only 33% - substantially less than the figure of 38.5% previously recognized. All members of the Wages Council being satisfied with that negotiated compromise wage settlement believed they had properly fulfilled their responsibilities to their employer and employee organizations. Such a procedure is an investigation that the representatives acknowledged as fit and proper and is in accord with similar negotiations that must occur regularly. In other words what else is there to investigate if everyone agrees?

The second issue raised by the appellant is that the proposed wage increase was not set out in the advertisement dated the 16th April 1993. It is conceded by the appellant that this argument was not raised in the Court below. However while notice of the proposals was indeed published specific details of the proposals were not. Indeed it would be very surprising if parties to a wage settlement would want such confidential information as wage rates disclosed to the public. The advertisement therefore complies with section 8.

The final issue raised by the appellant was that the notice did not state where copies of the proposals could be "obtained". Rather the notice stated where copies were "displayed". There is no suggestion that of those 16 named offices throughout Fiji of the Ministry of Labour and Industrial Relations, copies of the proposals could not be obtained. This in our opinion is a minor irregularity as to form. It is not a case of flagrant invalidity

which would justify granting the leave sought in this application. There is no evidence of confusion disadvantage or prejudice arising from the notice as published. In fact the notice did attract a submission which the Council in due course considered. There has been no measure of procedural unfairness upon which the appellant can rely as a ground for the leave it now seeks.

This appeal, identifies the difficulties involved in the strict adherence to procedural technicalities. The question that often arises is whether form and procedure should be disregarded or whether inflexibility that leads to inefficiencies should be approved. The development of recent Administrative Law tends towards a greater appreciation of the public interest involved in order to ensure, in appropriate cases, less inconvenience to public authorities and a more efficient public administration.

The case of R v Monopolies and Mergers Commission and Another, ex parte Argyll Group Pic (1986) 2 All ER 257 identifies this trend. In this case the chairman of the Monopolies and Mergers Commission acting alone and before the members of that Commission had even been set up to carry out the investigation decided that the Commission would not proceed with the reference it had to consider. It was held that in the absence of express or implied power in the 1973 Act for him to do so, the Chairman of the Commission had no power to act on behalf of the Commission in the interregnum before the members were even appointed to investigate the reference. Nevertheless the Court of Appeal

exercised its discretion and decided that a judicial review should not be granted.

The basis of exercising that discretion by the Court is interesting. Sir John Donaldson MR in considering the facts, which could reasonably be described as extreme explained the exercise of the Courts discretion in the following way:-

"We are sitting as a public law court concerned to review an administrative decision albeit one which has to be reached by the application of judicial or quasi-judicial principles. We have to approach our duties with a proper awareness of the needs of public administration. I cannot catalogue them all but, in the present context, would draw attention to a few which are relevant.

Good public administration is concerned with substance rather than form....."

"Good public administration is concerned with the speed of decision,....."

"Good public administration requires a proper consideration of the public interest....."

"Good public administration requires a proper consideration of the legitimate interests of individual citizens, however rich and powerful they may be and whether they are natural or juridical persons....."

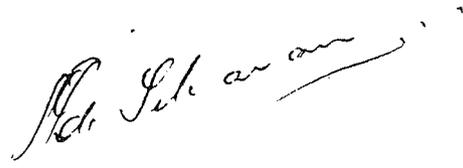
"Lastly, good public administration requires decisiveness and finality, unless there are compelling reasons to the contrary....."

We have taken into account those principles. In addition we recognize that the wage rate was proposed by the appellants representative; unanimously agreed to by the Wages Council; and approved by the Minister.

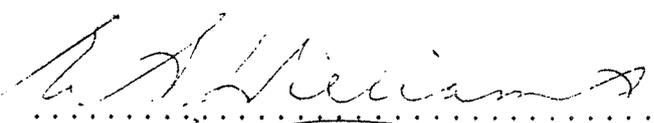
We are satisfied that Byrne J was correct in holding that the appellant did not have an arguable case.

Accordingly we affirm the Judgment of Byrne J. delivered on the 28th December 1993 refusing the appellant leave for Judicial Review.

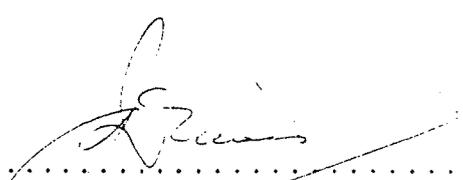
The appeal is dismissed with costs to the respondent.



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Sir Moti Tikaram
President Fiji Court of Appeal



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Sir Edward Williams
Judge of Appeal



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Mr Justice Dillon
Judge of Appeal