

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. ABU0001 OF 1996

(High Court Civil Action No. 364 of 1990)

BETWEEN:PREM NARAYANAPPELLANT

-and-

WESTPAC BANKING CORPORATIONRESPONDENT

Dr. M. S. Sahu Khan for the Appellant
 Mr. B. Sweetman for the Respondent

Date and Place of Hearing : 26 November 1996, Suva

Date of Delivery of Judgment : 29 November 1996

JUDGMENT OF THE COURT

This is an appeal from a judgment of Pathik J dated 22 November 1995 wherein he dismissed a claim by the appellant for damages for wrongful dismissal by the respondent Bank on 17 April 1990. At that time he held the responsible position of relieving manager in the Pacific Islands division. In 1981 he had been at the Sigatoka branch and had become acquainted with the proprietors of the Shell Service Station there. They were customers of the Bank, but after he left on transfer to Suva they took their custom to the ANZ Bank. He returned to Sigatoka as relieving manager in 1989 and said that he tried to get their

business back to Westpac and it was over this period that the complaint giving rise to the Bank's decision to dismiss him arose.

The Bank claimed that he had disobeyed standing instructions over a period between ~~May~~ May 1989 and April 1990 by failing to deal appropriately with dishonoured cheques drawn by the Shell Service Station on the ANZ Bank at Sigatoka and deposited by Shell Fiji Limited to its account with Westpac at Suva. The respondent alleged that there were 53 cheques involved over this period, totalling \$756,415.00. In evidence the appellant acknowledged that when cheques were returned to Westpac marked "refer to drawer", Shell Fiji Limited's account should have been debited and a "dishonour advice" with the cheque mailed to the depositor. Instead of doing this he instructed subordinates to re-present the cheques.

When these matters were put to him by Westpac's senior management after he returned to the Suva office, the appellant explained that he had taken this course in order to win back the service station business to Westpac, and repeated this at the hearing. He maintained that he had authority "to bend the rules" in this way. In his submissions to us Dr Sahu Khan referred to evidence by the respondent's regional manager that at times managers exercise their discretion to re-present cheques; but that witness made it quite clear that this was something


exceptional and only done when there was a firm assurance from the paying bank's manager that there were funds available to meet the cheque. Nothing in the evidence suggested that Westpac would countenance for a moment the wholesale re-presenting of dishonoured cheques for an individual company, as occurred in this case.

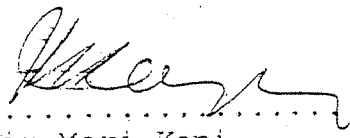
After considering appropriate authorities dealing with wrongful dismissal, Pathik J found this to be a clear-cut case of a serious breach of the Bank's instructions, particularly having regard to the potential effect on Shell Fiji Limited, a major customer of the Bank, kept throughout in ignorance of the dishonoured cheques. His Lordship concluded:-

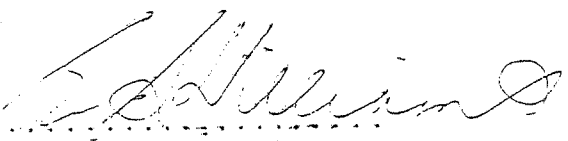
"In the outcome, in my judgment, the Plaintiff has pursued a course of conduct which amounted to a misconduct as a responsible employee of the Bank emanating from his persistent disobedience of standing instructions of the Bank. The nature of the misconduct was of such a serious nature which entitled the Bank to take the action it did in dismissing the plaintiff outlined hereabove. Accordingly, his action for wrongful dismissal in all the circumstances of this case is misconceived and fails."

Dr Sahu Khan's comprehensive submissions have not persuaded us that the Judge was wrong in this conclusion; indeed, we are

satisfied it was the only one he could reach on the evidence.
The appeal is dismissed with costs to the respondent to be taxed
if not agreed.


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Sir Maurice Casey
Judge of Appeal


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Sir Mari Kapi
Judge of Appeal


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Sir Edward Williams
Judge of Appeal