

IN THE STATUTORY TRIBUNAL, FIJI ISLANDS
SITTING AS THE EMPLOYMENT RELATIONS TRIBUNAL

ERT Grievance No 126 of 2011

BETWEEN: SATI RAJESH SHIU PRASAD

Complainant

AND: NASESE BUS COMPANY LIMITED

Defendant

Counsel: Ms A. Raitivi, for the Complainant
Mr D. Nair for the Defendant

Date of Hearing: Monday 10 September 2012

Date of Judgment: Monday 1 October 2012

JUDGMENT

REMEDY FOR UNFAIR DISMISSAL– Section 230(1) Employment Relations Promulgation 2007; Injury at Work; Abandonment of Employment.

Background

1. This is a grievance that has been referred to the tribunal from the Mediation Unit, Ministry of Labour, Industrial Relations and Employment in accordance with Section 194(5) of the Employment Relations Promulgation 2007.
2. The basis of the complaint is that the worker alleges he was terminated in his employment following a workplace health and safety accident at work, in which he claims to have received electric shock.
3. The worker seeks monetary compensation as the appropriate remedy.

The Case of the Worker

4. The worker was the first person to give evidence in the proceedings.

5. His evidence was as follows:
 - He commenced employment with the Employer on 9 January 2011;
 - The nature of the contract, was an oral one;
 - He would work either five or six days per week;
 - He was engaged by the Employer to undertake bus body repairs;
 - On 5 March 2011, while welding a muffler underneath a bus, he was exposed to a naked electric wire and received electric shock to the hand;
 - Following the accident, the worker reported the incident to the Garage Manager, who in turn phoned the Company Director and advised that the worker should go to the Raiwaqa Health Centre;
 - For 3 consecutive Fridays, the worker was paid the amounts of \$170; \$150 and \$150 on the basis of sick sheets that he submitted to the Employer;
 - On 22 March 2011, when the worker presented another sick sheet to the Director, he was told:

You people are making me (a) fool. You just f....off from the company..I wont give you any single cent..
 - Without being given any opportunity to explain, the Director came out of his office from behind the counter and said:

Are you going or not ?
 - In response to that, the worker ran out of the office.

6. The worker said that he had been advised by a doctor that he cannot work for two years, though he admits to having had recently taken up a cleaner position with the Lautoka City Council, working two to three days per week.

The Evidence of the Company Director

7. Mr Jenindra Kumar gave evidence as the Director of Nasese Bus Company Limited.

8. His evidence was:

- The worker did not provide any sick sheet for five days after the incident and this was the first occasion that the worker spoke to the Director in relation to the incident;
- The worker was engaged to do bodywork and not welding;
- That for muffler repairs, would usually use gas welding;
- That the worker would be welcome to return to the workplace;
- The incident was not investigated, as the Garage Manager had advised that no plant had been accessed on that day;
- Was advised that all electrical wiring was ok;
- He denied threatening the worker in any manner whatsoever.

The Evidence of the Garage Manager

9. Mr Hamit Ashmeel Chand gave evidence in his capacity as Manager Nasese Buses.

10. His evidence was as follows:

- That he holds all keys of the stores and that it is only with his authority that items from the store are released;
- That the worker's ordinary working days were Monday to Friday and not Saturday;
- He recalls 5 March 2011 as a rainy day that the worker did come to the workplace "asking for the boss";
- He advised the worker that the Director was out of the office and then the worker left on a bus with a driver; and
- Was near the office of the Director on the day in which worker claims to have been chased away and denies any of those events.

Evidence of Bus Driver

11. The final corroborative evidence provided by the Company was that of a bus driver, Mr Ravinesh Chand.

12. According to Mr Chand:

- He recalls being assigned a bus run to Tailevu on 5 March 2011;
- He met the worker at the garage and recalls that the worker was not working;
- The driver said that he was asked by the worker when he was coming back and was advised at 7.00pm; and
- The worker boarded the bus to Tailevu and got off at Nabua.

Matters Arising From the Evidence

13. Clearly the two competing accounts of events do not coincide.

14. The Employer has the advantage of the corroborating account of all three witnesses and unfortunately for the worker, that does have ramifications.

15. The fact that the initial sick sheet dated 7 March 2011 provided to the Employer, suggested that the worker was unfit for duties for only two days, at first blush tended to suggest that the initial presentation at the health centre, revealed very minor medical concerns. This perhaps was the initial view of the Employer, that the injury or illness was only of a minor nature.

16. It is nonetheless noted in Workmen's Compensation Report dated 22 March 2011, that arising from an electric shock injury, the worker was deemed to be suffering from a 25% impairment.¹

17. Whether the incident occurred at work or not, the fact is that the subsequent conduct of the parties gave rise to the ending of the employment contract.

18. The worker alleges that he was summarily terminated by being "chased out" of the place of employment, on the other hand, the Employer argues that the worker abandoned his employment.

¹ See Applicant's Affidavit of Evidence in Chief dated 4 July 2012. (Exhibit A 3)

19. In either case by 30 March 2012, when the worker lodged his grievance with the Labour Office, he was clearly of the view that the employment relationship was at an end. I am inclined to agree.
20. What I do not understand is how an incident of this type if it did take place, largely went unreported.
21. More concerning though is the conduct of the Employer. The worker claims that he suffered electric shock at work and provided the Employer seven medical certificates to that effect.
22. The Employer has paid the worker for at least three weeks of absence.
23. An Employer who was challenging the occurrence of an event such as what is being alleged, would not ordinarily have entertained the sick sheets, particularly where it was firm in the opinion that the worker had not been working that day and the relevant plant was locked up.
24. I sense that the Employer therefore assumed some responsibility for the worker's fate. It is hard to draw any other conclusion.

Was the worker dismissed or did he abandon his employment?

25. Clearly there was some miscommunication on the relevant day in which the worker returned to his Employer, seeking his wages.
26. There is likely to have been frustration from the perspective of the Employer, particularly if in the earliest stages, the worker was seen only to require two days from work.
27. The worker too gave evidence of his isolation working in Suva, having moved into the city with no real support network. He may have been feeling vulnerable in his lot.

28. In any event, at some stage it was determined that the employment contract was no longer a workable one.
29. If I am to accept the evidence of the Employer, it was due to the worker abandoning his role. If I accept the worker's account of events, it is as a consequence of being told to leave the workplace.
30. There was no evidence of any great effort made by the Employer in ascertaining the whereabouts of the absent worker. Yet, the worker appears not to have made any real effort in reconciling any differences as well.

Conclusions

31. Based on the evidence before me, it seems to be medically accepted that the worker suffered electric shock at the workplace. He has been assessed as having a 25% impairment.
32. While the injury at work question may be one worth exploring in the context of common law or statutory compensation, the immediate issue before me relates solely to the allegation of unfair dismissal.
33. To make things clear, the Employer has offered to re-engage the worker, though the worker is not inclined to accept that offer.
34. Given the evidence pertaining to the short term nature of the role, it is hard to know whether the Company would have engaged the worker for a lengthy period of time in any event.
35. My impression is that the Company should have assisted the worker further in his rehabilitation back to work. There is simply no evidence of this.
36. I believe that the worker did have an argument with the Company Director and this did give rise to the parties by their conduct, bringing the employment relationship

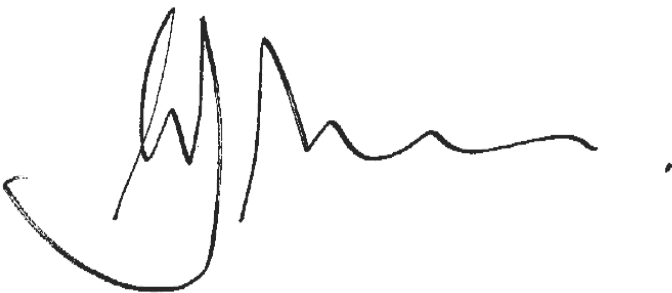
to an end. The Company would have been perfectly entitled to challenge the conduct of the worker had it been of the belief that he was engaging in fraudulent conduct. It did not do so. It recognised the sick sheets for an initial three week period. I find therefore that it is likely that the accident did take place and the worker did suffer an injury at work.

37. Having regard to the length of time in which the worker worked at the Company, I believe that two month's compensation of wages in the circumstances would be an appropriate quantum to be awarded. The worker is a body repairer who has no evidence of formal training qualifications. His evidence was that he was receiving \$250.00 per week, prior to the incident. On that basis, I find that the worker should be compensated for the loss of livelihood in these particular circumstances.
38. I find that compensation in the amount of 12 weeks wages is appropriate in these circumstances. That figure I will assess as \$3000.00

DECISION OF THE TRIBUNAL

The Tribunal orders:

- (a) The Company pay the worker the amount of \$3000.00 within 28 days.
- (b) That each party bear their own costs.

A handwritten signature in black ink, appearing to read 'Mr Andrew J See'. The signature is fluid and cursive, with a large initial 'A' and 'S'.

Mr Andrew J See
Resident Magistrate