

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

APPELLATE JURISDICTION

CASE NUMBER: ERCA 15 of 2018

BETWEEN: **FIJI NATIONAL UNIVERSITY**
APPELLANT

AND: **CAMARI MARAMA**
RESPONDENT

Appearances: Mr. R. Chand for the Appellant.

No Appearance for the Respondent.

Date/Place of Judgment: Monday 22 November 2021 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

JUDGMENT

Catchwords:

Employment Law – Employee alleged to be stealing food from the employer's kitchen – she admitted taking food away but upon paying for the same - no evidence provided that she paid for the food or that the employer's policy allowed her to remove the food in that manner – the tribunal's finding that she paid for the food and that it was a legitimate way for the worker to take away the wasted food was not supported by any evidence – Tribunal's finding is an error of fact – the act of stealing food is a serious offence and the employer was correct in determining the employment of the worker.

Cause

1. The employer appeals against the decision of the Employment Relations Tribunal (***Tribunal***) of 30 May 2018 on its findings that the employer had unlawfully terminated the employee from work for which the employer was liable to pay to the employee 12 month's lost wages.

2. Camari Marama was employed as a Catering Assistant for a term of 3 years with effect from 23 January 2011 to 23 January 2014.
3. On 7 May 2012, she was issued with a suspension letter through which it was alleged that on 6 May 2012 at around 6.45 pm she was caught at the main security gate taking food ration materials that were allegedly stolen from the FNU Lautoka Canteen. The specific item that was alleged to be stolen was leftover food in a takeaway container.
4. The employee was suspended without pay and asked to provide her response as soon as possible. She responded on 9 May 2012. In her response she stated that there were some foods left to be sold and she thought of buying it rather than throwing the food away. She said that she paid \$0.50 for the leftover food and packed the same in a takeaway container.
5. In the same response she further stated that when the security had stopped her she realized that she did not have the receipt. She said that she would have eaten the food in the cafeteria if she was stealing the same but she wanted to take it home and pay something for nothing rather than throwing away the food to the dogs. She apologized for not having the receipt with her and gave an undertaking that such a thing will not happen again.
6. On 21 May 2012, the worker was terminated. The letter of termination in its material parts reads:

“It was alleged that on 6th May, 2012 at around 6.45pm you stole leftover food from Lautoka Campus Canteen.

You were given an opportunity to explain your conduct which you did by letter dated 9th May, 2012.

After due consideration the University finds you guilty of gross misconduct in that you stole left over food from Lautoka Campus Canteen.

Therefore, and pursuant to section 33(1) (a) of the Employment Relations Promulgation 2007 and sections 8.3 and 26.0 of FNU HR Policy No. 29, your employment is terminated with immediate effect...”

7. Following the termination, the worker made a claim for unlawful dismissal.

Findings of the Tribunal

8. In arriving at a finding that the worker was unlawfully terminated, the Tribunal found that in her letter of explanation she had stated that she had the receipt for the food that she took home. The Tribunal found that that was a legitimate way of taking left over food from the employer's kitchen and therefore that act of the employee did not give the employer a right or justification to terminate her.
9. It went onto further conclude that the employer acted unreasonably and without conducting a proper and thorough investigation. It found that the employer ought to have disclosed the contents of the investigation to the employee. The employer ought to have provided the employee with an opportunity to cross examine those who had made adverse reports against her. In absence of such actions being taken by the employer, the Tribunal found that there was breach of procedural fairness and natural justice.
10. The Tribunal also found that the employer should have dealt with the matter through the Staff Disciplinary Committee and the absence of according such procedure to her was in breach of the principles of due process and natural justice.

Appeal

11. The concern on the appeal is that in arriving at the conclusion that the employee was unlawfully terminated, the tribunal did not have regard to the evidence of stealing food placed before it and the proper procedure required by law to deal with cases for summary dismissal.

Analysis

12. The tribunal had found that the worker had stated in her letter that she had the receipt for the food and that was the legitimate way of taking leftover food away from the canteen.
13. The worker did not provide any receipts to the Tribunal which is evidence of payments for the leftover food. When the Human Resources section had asked her to provide the receipt, she wrote a letter in the following terms:

“ Regarding the receipt that you wanted I sent you already the date on that receipt is the 7th I left that night the security told us that we were cleared I was only taking left over food just a piece of fish in a takeaway container. The security did not asked me for the receipt so I thought that they would not mind I came to work the next day I paid the receipt in case the security will come and ask me I did not know that it would go this further I am sorry for any inconvenience I still have the original with me for your clarification”.

14. Attached to that letter was a document on which a chit was attached. The chit read “wastage paid” and the same was signed by the worker.
15. The Tribunal did not analyse the entire evidence in the case. The subsequent letter of the worker attaching the chit she signed clearly indicates that when she took the food away, she had not paid for the same. She paid it the second day when she was caught by the security officer and questioned about the food.
16. The worker’s intention was to steal the food which was meant for the students who did overtime classes. It is very clear from the University’s position that the employer was suffering shortage of food for the students who did late classes. These are the students who had paid for the food and did not get the food because of the actions of the workers who were not loyal and not only cheating the employer but the students who had legitimate expectation to be provided with the food.
17. The chit which says “wastage paid” and signed by the worker is not verified by the University as an authentic and proper receipt issued by the employer which shows that the worker had created a bogus document to justify her position. That document cannot be given any weight.
18. Further, the employer had produced the records of the cafeteria which had wastage recorded in it and there is no transaction which evidences that the worker paid for the food. There is lack of official record of food being taken by the worker and thus the actions classified as stealing food.

19. The worker did not have the permission to take food away from the canteen even after paying for it. The food was meant for the students. There was no basis for the Tribunal to find that the worker's action was a legitimate way of taking food away from the employer. That finding was not supported by any evidence.
20. It also concerns me on how the worker assessed the price of the leftover food. Even if the employer allowed her to take the food away, then the employer must do the costing for the food. The employer should assess what amount is the correct amount that should be paid and not what the worker assesses to be the price of the food. This worker's explanation is an attempt to justify her actions which cannot be condoned.
21. The security guard who had conducted a check on the suspected vehicles found the worker with the leftover food. The car in which she was travelling in had other staff taking some more items like the driver taking 3kgs of lamb chops and one Ms. Lakabara taking 2 dozen buns. This indicates that there was sealing racket by the workers which is a serious offence for which the employer is entitled to take an action for dismissal. The statement of the security guard appears on pages 33 and 34 of the records.
22. If the employees are to remove food from the kitchen then the students and staff will suffer and the employer will be at a loss in not being able to meet the needs of the students who are paying for the food. It is serious act which must not be condoned. I do not think that one must look at the size of the stealing. Stealing of any item is a serious offence and on my part I find that condoning such acts will only encourage workers to continue to deprive the employer every day in small scales to avoid punishment.
23. The worker's conduct was reprehensible and was not something that could be dealt with by any other measure. I find that the employer had a valid reason to terminate the employee.
24. On the question of procedure, this was a case for summary dismissal and in a case where gross misconduct is involved, the employer is not obliged to provide the employee with all the evidence it has and give the employee a chance to cross-examine the witness.

25. The employer conducted its own investigation and found out the truth of the matter based on which the termination took place. That reason is justified on the evidence in Court. The employee was asked to respond and she was given a chance to provide her side of the story although in serious cases warranting summary dismissals, this is not even mandatory a process.
26. The Tribunal did not correctly find that the proper process was followed under the law.

Final Orders

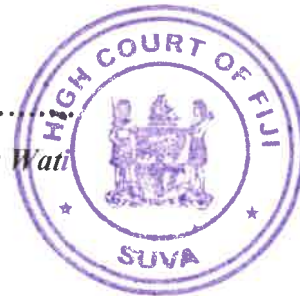
27. In the final analysis, I allow the appeal and set aside the decision of the Tribunal wholly. I find that the employer was justified in terminating the worker when she stole food from the employer's kitchen.
28. I also order each party to bear their own costs of the appeal proceedings.

Anjala Wati

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Hon. Madam Justice Anjala Wati

Judge

22. 11. 2021



To:

1. FNU In – House Legal Department for the Appellant.
2. Respondent.
3. File: ERCA 15 of 2018.