

**IN THE EMPLOYMENT RELATIONS COURT**  
**AT SUVA**

ERCC 25 of 2018

**BETWEEN** : UDAY RAJ SINGH

**PLAINTIFF**

**AND** : LAND TRANSPORT AUTHORITY

**DEFENDANT**

**BEFORE** : M. Javed Mansoor, J

**COUNSEL** : Mr. D. Nair for the Plaintiff

: Ms. L. Malani and Mr. V. Chand for the Defendant

**Date of Hearing** : 7 August 2023

**Date of Judgment** : 15 January 2024

# JUDGMENT

*EMPLOYMENT*

*Breach of contract – Expiry of fixed term contract – Non renewal*

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1. The plaintiff filed action claiming that the defendant acted in breach of his employment contract by terminating his employment.
2. The plaintiff pleaded that he was appointed the regional manager, central and eastern of the Land Transport Authority on 1 October 2012. Thereafter, his employment was terminated on 12 July 2013. He says he could have continued in employment for a further four years until the age of 60 under the partnership agreement and that the defendant allowed other employees to continue in employment until their age of retirement. He alleged that the termination of his employment was unjust and unlawful, and that he has suffered loss of livelihood and damages as a result of the defendant's action.
3. The defendant filed a statement of defence and denied the plaintiff's claim and pleaded that his contract lapsed after the duration of a year on 12 July 2013. The defendant denies termination and states that the contract was not renewed upon expiry of the contract. The defendant says that the employment contract prevails over the partnership agreement. The plaintiff filed a reply to defence.
4. The defendant's application to strike out the action was disallowed by the court's decision dated 27 February 2023, and the action was allowed to proceed on the basis that elements of a breach of contract seem to have been raised by the plaintiff's pleadings, though not very clearly. The plaintiff was allowed to amend his statement of claim, but did not do so.
5. The main issue raised by the plaintiff is that the defendant acted in breach of the partnership agreement, which stipulates 60 as the age of retirement, by terminating his employment, and that the employer's action was discriminatory.
6. In his evidence, the plaintiff referred to the partnership agreement dated 30 July 2003, which gave the retirement age as 60. Although he had discussions with the

defendant on the matter, his employment contract was not renewed. He says he had a legitimate expectation towards the renewal of his employment. He was seeking damages as his employment was terminated four years prior to his legitimate retirement age.

7. In cross examination, the plaintiff said he was aware that his employment contract prevailed over the partnership agreement where there is an inconsistency. He said that his contract was renewed for a year on 7 July 2010. It was again renewed for a year on 13 July 2011. When his contract lapsed on 10 July 2012, it was renewed for another year. He agreed having completed the full term of the contract, which ended on 12 July 2013. He conceded that the contract of employment and the partnership agreement did not make provision for an automatic renewal of the contract. He received all dues under the contract.
8. The defendant's manager, human resources, Matila Cama, gave evidence on behalf of the defendant. The witness said there is no guarantee that a worker could continue in employment until the age of 60. The witness said the plaintiff was informed that his contract would not be renewed, and it was not renewed when it expired.

#### **Evaluation of the evidence**

9. The plaintiff held various positions with the defendant over a long period. After several appointments, on 9 July 2010, the plaintiff signed an employment contract which had a year's duration. The contract was renewed for another year on 7 July 2011 for the position of manager, licensing, registration and driving. The contract was again renewed on 10 July 2012 for a further year. On 13 July 2013, the defendant notified the plaintiff by way of a memo of the end of his employment contract.
10. The plaintiff's complaint is that the partnership agreement – which is signed by the chairman of the Land Transport Authority – provides for retirement at the age of 60. The employment contract provides that it would prevail if there is any inconsistency with the partnership agreement. The court accepts the defendant's argument that retirement age is subject to the employment contract being in force.

Neither the employment contract nor the partnership agreement provides for automatic renewal of the contract. A written contract is terminated by the expiry of the term for which the contract is made.

11. It is noteworthy that that the plaintiff was given notice of the non-renewable employment contract on 12 July 2013. He came to court on 27 November 2018, five years after the lapse of his contract. He was within the period of limitation to file action for breach of contract. However, the evidence does not disclose a breach of the plaintiff's employment contract by the defendant.
12. The plaintiff will not succeed in his action.

**ORDER**

- A. The action is dismissed
- B. The parties will bear their costs.

Delivered at **Suva** this 15<sup>th</sup> day of **January, 2024**.



M. Javed Mansoor  
Judge