

IN THE EMPLOYMENT RELATIONS COURT AT SUVA
APPELLATE JURISDICTION

CASE NUMBER: ERCA 08 of 2017

BETWEEN: **CARPENTERS (FIJI) LIMITED** trading as **MORRIS HEDSTROM**

APPELLANT

AND: **RUVEL RATNESH RAO**

RESPONDENT

Appearances: Mr. E. Narayan for the Appellant.

Ms. L. Mataigusu for the Respondent.

Date/Place of Judgment: Wednesday 13 March 2024 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

JUDGMENT

Catchwords:

Employment Law – Appeal – whether the tribunal was correct in arriving at a finding that the procedure to terminate the worker was wrong in law making the dismissal unlawful and whether the worker was unfairly terminated from employment.

Cause

1. The worker was terminated from work as Merchandise Officer from the appellant's employ on 9 November 2011.
2. He brought an action against his termination. The Tribunal found that the worker was both unlawfully and unfairly dismissed from employment. As a result, the Tribunal awarded the worker 2 years of wages lost for unlawful dismissal. This 2 years wages was reduced by one year to reflect the contribution of the worker towards the situation that gave rise to the employment grievance.

3. The Tribunal had further ordered the employer to pay to the worker 6 month's wages for unfair dismissal to compensate him for the humiliation, loss of dignity and injury to his feelings.
4. The employer appeals the decision wholly on its findings of unlawful/unfair dismissal and the quantum of damages.
5. The worker was terminated for gross misconduct. The specific allegations were:
 - (i) *Stock loss in excess of \$10,000 resulting from direct negligence of the worker;*
 - (ii) *Reserving stocks for preferred clients thus disadvantaging other clients;*
 - (iii) *Entering the work premises intoxicated which is against the norms of the company thus bringing disrepute to the business;*
 - (iv) *Allowing subordinates to print reports under his login which was against accounting practices; and*
 - (v) *Failing to take appropriate disciplinary action on a cashier who had released goods without scanning and passing the investigation onto the security without follow-up which was not acceptable to the employer.*

Appeal

6. The employer has raised 2 grounds of appeal as follows:
 - (1) ***The Tribunal has erred in law and in fact in holding that the termination of the worker was unjustified, unfair and wrong in all the circumstances given that:***
 - (i) ***Such finding was contrary to and unsupported by the evidence, both documentary and oral, adduced during the hearing and on the totality of the evidence otherwise adduced;***

- (ii) *The employer had established sufficient justification and grounds for the dismissal of the worker and that it had acted fairly and reasonably in adopting a fair process leading up to the dismissal; and*
- (iii) *It failed in its application of established legal authorities and principles in this case.*

(2) The Tribunal erred in law and in fact in awarding the worker 1 year's wages for unlawful dismissal and 6 month's wages as compensation for humiliation, loss of dignity and injury to the feelings of the worker.

Analysis

7. In its judgment, the Tribunal did not ever discuss or deal with whether the actions alleged against the worker were met on the evidence. It only found that the dismissal was procedurally unjustified on the basis that when the worker was interviewed, he was not given a chance to challenge the allegations and the employees making the allegations.
8. I do not agree with the Tribunal that the termination was procedurally unjustified because the worker was not given a right to cross examine the other employees who had given evidence against him.
9. This was a case of summary dismissal where the employer gathered its information from the relevant sources on the allegations against the worker. It then put the allegations to the worker in writing and provided him with several opportunities to respond to those allegations. He was also allowed to bring a representative with him at the interview during the investigation process where he was told of all the allegations and the other witness's version on the allegations.
10. He was not denied the opportunity to be heard on his version upon which a decision was made whether or not to terminate the worker. I do not find that if an employer has decided to gather information to decide whether there is a lawful cause to carry out dismissal of a worker, and in the process interviews the worker, the worker should be given a chance to cross examination all the witnesses.
11. The worker ought to have brought his evidence and named the witnesses who could testify for him. That is all he was entitled to, which opportunity was provided to the worker.

12. I therefore find that the Tribunal had erroneously extended the right of the worker to include the right of cross examining witnesses during the time of internal investigation. I therefore do not find that the termination was procedurally unjustified.
13. I find that the reason the Tribunal did not comment on the lawfulness of the reasons for dismissal is that it was of the view that the reasons for the dismissal were justified. My view is reinforced by the Tribunal's act of reducing the remedy for unlawful dismissal to reflect the worker's contribution to the situation that gave rise to the grievance.
14. What conduct of the worker that contributed towards the grievance was not identified. In the circumstances, it could only be that the worker was guilty of the allegations and that the allegations justified summary dismissal. There are so many cases where the same Tribunal has carefully examined the reasons for the termination to decide whether summary dismissal was justified. The omission in this case concludes that it found the worker guilty as alleged by the employer.
15. In any event, the worker's own evidence established that he was reserving stocks for preferred clients and that he did not investigate an allegation against the cashier Ms. Ronika Nair who sold a packet of red cow milk without scanning.
16. Reserving stocks for some people is treating people differently. That is not constitutional and the policy of this employer. The worker inventing his rule to favour the rich and the famous is not justified. His own terms and policies cannot malign a business. His actions amounted to misconduct.
17. In respect of Ms. Ronika Nair, the worker admitted that he asked the security to investigate. He did not follow up on the investigation and make a finding. Ronika Nair was alleged to be one of the worker's favorites. In that case he ought to have ensured a proper investigation against her and a report was to be provided to the employer.
18. I do not find that the evidence before the Tribunal indicated that other allegations were not met. It therefore was proper on the allegations to terminate the worker.
19. The Tribunal's award of compensation for humiliation, loss of dignity and injury to the feelings of the worker was not supported by any finding of fact that the worker's dismissal was carried out in a manner that caused him to be humiliated thus injuring his feelings. I therefore set aside this award.

Final Orders

20. In the final analysis, I allow the appeal and set aside the judgment of the Tribunal. The parties are to bear their own costs of the appeal proceedings.



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Hon. Madam Justice Anjala Wati

13.03.2024

To:

1. *Patel Sharma Lawyers for the Appellant.*
2. *Ministry of Employment, Productivity and Industrial Relations for the Respondent.*
3. *File: Suva ERCA 08 of 2017.*

