IN THE EMPLOYMENT RELATIONS COURT AT LAUTOKA

APPELLATE JURISDICTION

Appeal No. ERCA 02 of 2021

IN THE MATTER of an Appeal from the decision of the Employment Relations Tribunal in ERT Grievance Case No. 79 of 2019.

AN APPLICATION pursuant to section 242 of the Employment Relations Act 2007.

BETWEEN

GLAMOUR ARTS & PRINTERS

APPELLANT [EMPLOYER]

AND

AVINESH REDDY

RESPONDENT [GRIEVOR]

Counsel : Mr. Yunus M. for the Appellant

Respondent in Person

Date of Hearing : 23rd February 2024

Date of Judgment : 26th March 2024

JUDGMENT

[1] In this matter the respondent registered his grievance on 5th April 2019 with the Ministry of Employment complaining that he was unfairly dismissed by the employer. Since the mediation process was unsuccessful the matter was referred to the Employment Relations Tribunal (the Tribunal).

[2] The Tribunal after hearing the parties made the following orders:

(i) The employer's decision to terminate the grievor is declared unlawful, wrong and unfair. Accordingly, the grievor's claim for unlawful and unfair and dismissal is allowed forthwith.

(ii) I will allow compensation for five (5) months pegged at $12,240 his annual salary given the severity of the actions of the employer.

(iii) I order the employer to pay a sum of FJD $500.00 summarily assessed as loss of benefit which the worker might reasonably expect to obtain if the employment grievance had not occurred.

(iv) The employer to pay the grievor within 21 days hereof.

(v) The parties will bear their own costs in this matter.

[3] Being aggrieved by the decision of the Tribunal the appellant preferred this appealed to this court on the following grounds:

1) The learned Tribunal erred in law and in fact in holding that the employer's decision to terminate the griever was unlawful, wrong and unfair even though there was evidence that the respondent self-terminated and walked out of employment and failed to return to

employment for 4 days until an email on 18 March 2019 was given to him stating that his employment was terminated.

2) The learned Tribunal erred in law and in fact in holding that the employer's decision to terminate the griever was unlawful, wrong and unfair even though there was unchallenged evidence that the respondent was informed about the termination of his employment on 18 March 29019 via email after he failed to return to work for 4 days.

3) The learned Tribunal erred in law and in fact in assessing the compensation for 5 months pegged at$12,240 as annual salary despite having unchallenged evidence;

    1. The respondent only claimed for $5,000 in his application;
    2. The respondent self-terminating his employment by voluntarily walking out of the employment and staying away from employment for 4 days;
    3. The respondent admitting that he received an email from the employer on 18 March 2019 informing him that his employment was terminated and reason was
    4. The respondent admitted he started another employment within one week.
    5. The respondent was paid all his wages and dues and the appellant did not owe him any money.

4) The learned Tribunal erred in law and in fact in assessing the compensation for 5 months pegged at $12,240 as annual salary despite having no evidence that the respondent lost his earnings for 5 months and failed to consider that the respondent admitted that he started another employment within one week.

5) The learned Tribunal erred in law and in fact in holding that the employer's decision to terminate the griever was unlawful, wrong and unfair even though there was evidence that the respondent was previously given verbal warning by the employer for making similar

mistakes in printing which had cost the employer substantial loss of earnings.

6) The learned Tribunal erred in law and in fact to award the of $500 and held that "*the employer to pay the sum of FJD $500 summarily assessed as loss of benefit which the worker might reasonably expect to obtain if the employment grievance had not occurred*" when in fact the respondent admitted that he started another employment within one week.

7) The learned Tribunal's finding is unreasonable and unsatisfactory in all the circumstances of the matter.

[4] In this matter the dispute between the appellant and the respondent was due to a letterhead designed by the respondent was dark in colour when it was printed. The respondent's position is that there had been fight between him and another employee Irfaz. After the fight the respondent had made a complaint to the Ba Police and stopped coming to work because he was afraid what Irfaz might do to putting out of the office.

[5] The issue here is whether the employment of the respondent was terminated by the appellant or respondent himself refused to come to work.

[6] The Tribunal went on the basis that the employer terminated the services of the respondent. However, the evidence revealed that it was the respondent who decided not to come to work. As I stated earlier the reason offered by the respondent for not reporting to work was that he was scared come to work after the fight he had with Irfaz. After four days from walking out of work the respondent wrote an email on 18 March 2019 to the appellant stating;

> Can you please advice what is my work status in Glamour Arts and Printers as at today.
>
> Please note that after our conversation on Wednesday, I have been trying to speak with you regarding this.

> Even I have messaged you on viber and emailed you, thiu you did not send my wages.
>
> Even today as we spoke you said not to come.

[7] In the email the respondent has not mentioned that he was scared to come to work. It shows that he was only interested in his salary.

[8] In cross-examination the respondent has admitted that he stayed at home from 12th to 18th March 2019 at his own free will.

[9] The learned Tribunal in deciding that the termination was unlawful cited the following paragraph from **Central Manufacturing Company Limited v Yashni Kant** CBV 0010 of 2002;

> "...it is not the aspect of right to be heard that leads to unfair dismissal.it is the manner of treating the employee in carrying out the dismissal that must be considered. The employer's action must be assessed as to ascertain whether the employee was treated with fairness, respect and dignity in carrying out the dismissal."

[10] In this matter there is no evidence that the appellant treated the respondent unfairly and in an in dignify manner.

[11] The Tribunal arrived at the conclusion that the appellant had been harsh in terminating the respondent. The evidence shows that the appellant had given every opportunity for the respondent to report back to work but the respondent chose not to come back to work. The appellant had no choice but to terminate the respondent. Appellant is a business and it needs it employees to continue with its work. The respondent should have been mindful of that fact.

[12] Section 33 of the Employment Relations Act provides:

> (1) No employer may dismiss a worker without notice except in the following circumstances;
>
> (a) where a worker is guilty of gross misconduct;
>
> (b) for willful disobedience to lawful orders given by the employer;

(c) for lack of skill or qualification which the worker expressly or by implication warrants to possess;

(d) for habitual or substantial neglect of the workers duties; or

(e) for continual or habitual absence from work without the permission of the employer and without other reasonable excuse.

(2) The employer must, provide the worker with reasons, in writing, for the summary dismissal at the time he or she is dismissed.

[13] Sub-section 2 of section 2 is absolutely clear. It only requires for the employer to give reasons for summary dismissal and it does not require the employer to give notice before termination.

[14] In **Automart Ltd v Rokotuinasau** [2013] FJHC 230; ERCA 09.2012 (26 April 2013) it was held;

> The only procedure that is required under the statute is the requirement to give written reasons for dismissal. By s. 34 the ERP also requires that "if a worker is summarily dismissed for a lawful cause, the worker must be paid on dismissal the wages due up to the time of the worker's dismissal". The employer did not pay the employee any annual leave pay which should have been paid. It agreed that leave pay was outstanding.

[15] The Managing Director of the appellant in his email sent to the respondent has given the reasons for respondent's dismissal. The email reads;

> Glamour and Printers has no room for staffs who disrespect Directors, staffs, suppliers and our clients.
>
> You walked away from work leaving us crippled for 4 days, in this regard we had no choice and had to hire a staff who is taking care of your position very well.
>
> Your termination letter and your pay will be delivered within 2 weeks after companies pay Director is in office from overseas. I believe you took loan from company and we have to get that sorted out first.

[16] The Tribunal also has observed that the respondent was not provided a written contract which would have articulated any standard unfair procedures used by the employer in consideration for on-spot termination. Section 21 if the Employment Relations Act provides;

> All contracts of service, other than contracts which are required by this Act or any other law to be made in writing, may be made orally.

[17] Therefore, there was not requirement in law to have every employment contract in writing.

ORDERS

1. Appeal of the appellant is allowed and the orders made by the Tribunal are set aside.
2. There will no order for costs.

Lyone Seneviratne

JUDGE

26th March 2024