

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

APPELLATE JURISDICTION

CASE NUMBER: ERCA 05 of 2017

BETWEEN: **FIJI PUBLIC SERVICE ASSOCIATION**
APPELLANT

AND: **FIJI REVENUE AND CUSTOMS AUTHORITY**
RESPONDENT

Appearances: Mr. R. Singh for the Appellant.

Mr. S. Ravono for the Respondent.

Date/Place of Judgment: Thursday 30 May 2024 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

JUDGMENT

Catchwords:

Employment Law – Appeal – interpretation and application of the employer’s policy to determine when an employee qualifies for normal allowance upon transfer – does the employee have to physically move residence- Transfer & Housing Policy & Procedures HR Policy: 05/2012 clear and unambiguous.

Cause and Background

1. This is an appeal by two employees, Sera Vunisa and Aminio Colawai, against the decision of the Tribunal wherein it held that they were not entitled to allowances upon transfer as they had not physically moved residence as required by ***HR Policy No. 05/2012 -Transfer and Housing Policy and Procedures.***

2. Sera Vunisa commenced her employment as a Customs Officer on 27 August 2007. The point of recruitment for Ms. Vunisa was Nadi. It was accepted by the parties that while she was working in Nadi, she was in fact residing in Lautoka.
3. On or around November 2014, Ms. Vunisa was promoted to a position within the Lautoka Office. She claimed that she is entitled to the housing allowance on the basis that she is no longer appointed to the location in which she was initially recruited.
4. Aminio Colawai commenced his employment on 13 February 2001. His initial point of recruitment was in Lautoka. He was transferred to Nadi in 2013. Aminio Colowai resides in Nadi. He maintains that he is entitled to be paid the benefits under the terms of the Policy on the basis that his initial point of recruitment was Lautoka.

Tribunal's Findings

5. The Tribunal stated that Sera was transferred under promotion. She had been recruited to Nadi and later transferred to Lautoka. Her point of recruitment was Nadi, even though she elected to live in Lautoka. She was advised by the Notice of Transfer dated 19 November 2014, that the housing allowance would not apply, as she had been residing in Lautoka.
6. The Tribunal found that Sera had not physically moved residence from one duty station to the other. Since there was no movement of residence from the point of recruitment after promotion, the claim for allowances must fail.
7. In Aminio's case, the Tribunal said that his situation did not appear to be any different from Sera. His point of recruitment was Lautoka, though he chose to live in Nadi. He was subsequently transferred to Nadi in 2013.
8. The Tribunal said that he too is not entitled to qualify for the allowances as he had not moved residence from one duty station to the other following his appointment. There is no justification to make a payment where there has been no movement post the appointment of the officer.

Appeal

9. The main ground of appeal is that the Tribunal erred in coming to a finding that an employee is only entitled to transfer if he or she moves residence upon transfer when the correct interpretation ought to have been when a worker changes his duty station, he or she is entitled to the housing allowance.

Analysis

10. The original ***Housing Entitlement Policy*** was issued on May 2003. It was revised on 31 October 2012. The title of the new policy is ***Transfer & Housing Policy & Procedures HR Policy: 5/2012***.
11. The simple point for consideration is: ***when does an employee qualify for normal allowances upon transfer?***
12. The policy makes it very clear that if a person is initially recruited to a position, even though he or she changes residence, no allowance is payable. However, if the worker's duty station changes thereafter, he or she is to be paid the allowances, if he or she is required to physically move residence. Any staff initiating or applying for transfers are not entitled to the allowance.
13. I refer to ***Transfer & Housing Policy & Procedures HR Policy: 5/2012***. Clause 2(4), (5) and (6) and Clause 5 are relevant. It reads:

Clause 2 Policy:

4. *Employees shall be eligible for housing allowance other than their point of recruitment.*
5. *Employees will be required to physically move residence from one duty station to the other to qualify for house allowance.*
6. *Change of house within a duty station does not qualify employees for transfer allowance or cartage of personal effects.*

Clause 5 Operating Procedure:

B. 2. *Staff initiating and applying for transfers will not be entitled to normal allowance (i.e. housing allowance, transfer allowance, cartage of personal effects).*

14. Based on the evidence that both the workers had not changed residence upon transfer, the Tribunal could not make any orders for allowances for them. The policy is clear to my mind and it should be applied accordingly.

15. A mere movement from one station to another does not qualify a worker for allowances. The worker has to physically move residence to qualify for allowances under the HR Policy of the employer.

16. I do not find any error of law or fact by the Tribunal.

Final Orders

17. The appeal is dismissed. Each party is to bear their own costs of the appeal proceedings.



Anjala Wati

Hon. Madam Justice Anjala Wati

Judge

30.05.2024

To:

1. *FPSA for the Appellant.*
2. *FRCS In House Legal Department for the Respondent.*
3. *File: Suva ERCA 05 of 2017.*