

IN THE EMPLOYMENT RELATIONS COURT

AT LAUTOKA

APPELLATE JURISDICTION

CASE NUMBER: ERCA 02 of 2015

BETWEEN: **YACHT HELP (FIJI) LIMITED**

APPELLANT

AND: **KAROLINA KOROIVIBAU**

RESPONDENT

Appearances: Mr. A. K. Narayan for the Appellant.

Mr. J. Mainavolau for the Respondent.

Date/Place of Judgment: Friday 07 June 2024 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

JUDGMENT

A. **Catchwords:**

Employment Law – Appeal – whether the tribunal was correct in arriving at a finding that the employer did not have justifiable reasons to carry out the termination of the worker and whether it's finding that the procedure to terminate the worker was wrong in law making the dismissal unlawful.

B. **Legislation:**

1. *Employment Relations Act 2007 (“ERA”): s. 33.*

Cause

1. The employer appeals against the decision of the Employment Relations Tribunal (“***Tribunal***”) on its findings that the worker was unlawfully dismissed from work and ordered the employer to pay 2 years lost wages. The initial award of lost wages was 2 years 6 months which was reduced by a period of 6 months due to the worker’s conduct that gave rise to the grievance.

2. The worker was employed as a cleaner. The employer had monthly contracts with the owners of the yacht. The work of the cleaner was to clean the yachts.
3. The worker's performance was not up to the expectation of the owners of the yacht. There were complaints raised against her by the owners, causing the employer to issue warning letters against her.
4. She received her first warning letter which stated that the vessel she was engaged to clean was not properly cleaned. She had lost the keys too.
5. After that, she was found conducting various breaches such as sleeping at work in the yacht, not wearing proper shoes around the marina and not carrying out cleaning works properly.
6. She was given another warning and suspended from work for a week. She was told that she has to return to work after a week and that her behaviour would be assessed. If nothing changed, she was told that she would be terminated from work.
7. When she was on suspension, she worked on another vessel which was also on a monthly contract with the employer. This caused her suspension.
8. Against that background, the employer says that the dismissal of the worker was justified under s. 33 of the ERA and that the Tribunal erred in not finding that it had justifiable reasons to carry out the termination without notice.

Law and Analysis

9. S.33 of the ERA gives the employers the right to terminate workers without notice in the following cases:
 - (a) *Where a worker is guilty of gross misconduct;*
 - (b) *For willful disobedience of 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 worker's duties; or*

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

10. The worker had admitted in her evidence that there were times when she did not properly clean the vessel, had not worn proper shoes and was sleeping at work. It is not just once that the worker did not clean the vessel properly. She admitted that there were instances where she did not do her work properly.
11. The evidence established that there was substantial neglect of the worker's duties and that she could not carry out the task that she was engaged to do. She was not terminated for this conduct straight away. She was suspended and told to mend her ways.
12. When she was suspended, she was told that upon her return, her behaviour would be monitored and if she did not change, she would be terminated. At least that warning ought to have given clear indication to the worker that she had to obey the lawful instructions of the employer.
13. She pays no heed to the employer's warning, and when suspended, goes to another vessel, which was under a monthly contract with the employer, and works on that vessel.
14. The worker's conduct was in direct breach of employer's directions on suspension. She disobeyed lawful orders to be on suspension for a week. The worker showed to the employer that she was not going to mend her ways as required. She therefore caused her own termination.
15. I find that the Tribunal did not analyse the evidence properly on the worker's habitual neglect of duty and that she did not have the skills of a cleaner. If the worker is not able to clean the vessel, the work for which she was employed, I find that she did not have the skills she professed she had for the work. She was also guilty of disobedience of lawful orders.
16. The worker's conduct was such that the employer was losing business as its clients were complaining about the worker's performance.
17. The employer had justifiable reasons to terminate the work of Karolina. The termination did not require any form of hearing from the worker. In any event the worker admitted the allegations against her during the Tribunal.

18. I find that the termination was lawful and fair. There was no procedural non-compliance in carrying out the dismissal. The worker was given the reasons for termination which was that she was still working after suspension. There is no complaint of any other non-compliance of the law such as payment of up to date wages and a certificate of service at the end of the employment.

Final Orders

19. I find that the termination was lawful and fair. I allow the appeal and set aside the findings and the orders of the Tribunal wholly.

20. I order each party to bear their own costs of the appeal proceedings.



.....
Hon. Madam Justice Anjala Wati

Judge

07.06.2024

To:

1. *Young & Associates Solicitors, Lautoka for the Appellant.*
2. *Office of the Attorney General for the Respondent.*
3. *File: Suva ERCCA 02 of 2015.*