

IN THE EMPLOYMENT RELATIONS COURT
AT SUVA
APPELLATE JURISDICTION

ERCA 29 of 2019

BETWEEN : **FIJI SUGAR CORPORATION**

APPELLANT

AND : **PRANIL DUTT**

RESPONDENT

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

COUNSEL : **Ms. S. Daven**

: **Mr. D Nair**

Date of Hearing : **6 September, 2022**

Date of Judgment : **24 January 2024**

JUDGMENT

EMPLOYMENT
renewal

Contract of employment – Non renewal of contract – Expectation of

1. This is an appeal against the resident magistrate's determination of 14 October 2019, by which the appellant was ordered to reinstate the respondent.
2. The respondent was employed as a procurement manager for a term of three years, which ended on 18 August 2017. On 14 August 2017, the respondent was advised that his contract would be extended by three months and end on 18 November 2017. During the extended period, the employer was to review its requirement for the position. By letter dated 16 October 2017, the appellant informed the respondent that his contract would not be renewed.
3. The respondent filed an employment grievance, which the mediator referred to the Employment Relations Tribunal. The respondent told the tribunal that on 11 October 2017, Kameli Batiweti, the human resource manager informed him that his services were no longer required by the appellant. He said that the chief financial officer, Manoj Ram, had verbally assured him that his contract would be renewed after the extension.
4. The appellant relied on Section 40 (1) of the Employment Relations Act 2007 in saying that the employment contract was terminated by expiry of the contract.
5. The tribunal stated the facts in its determination and made the following findings:
 - (1) "The non-renewal of the contract for the worker was unfair and unlawful.
 - (2) The worker is to be reinstated to his former position without any loss of pay or benefits from the date of dismissal till his reinstatement.
 - (3) The worker to be reinstated no less than 30 days from the day of this decision.
 - (4) No order as to costs"

6. The tribunal's determination was appealed, and the grounds of appeal are reproduced below:

- (1) "That the Learned Tribunal in the Court below erred in fact and law when she ordered that the Grievor be reinstated without any loss of pay or benefits effective from the date of dismissal without determining the actual quantum of the said workers annual remunerative package which when calculated from the date of dismissal 18th November 2017 amounts to \$77,728.42 exceeding the jurisdiction of the Tribunal of \$40,000.00 prescribed by section 211(2) (a) of the ERA 2007 (calculation based on Grievor's total annual remuneration of \$40,533.96 divided by 12 months multiplied by 23 months).
- (2) That the Learned Tribunal in the Court below erred in fact and in law when she determined that the non-renewal of the Grievor's contract was unfair.
- (3) That the Learned Tribunal in the Court below erred in fact and in law when she determined that the non-renewal of the Grievor's contract was unlawful.
- (4) That the Learned Tribunal in the Court below erred in fact and law when she ordered that the Grievor be reinstated without any loss of pay or benefits effective from the date of dismissal without giving due cognizance to the fact that the Grievor was employed at Budget Rentals from 31st October 2018 thus unfairly compensating the Grievor for the period in which he was in gainful employment.
- (5) That the Learned Tribunal in the Court below erred in fact and law when she ordered that the Grievor be reinstated without any loss of pay or benefits effective from the date of dismissal without giving due cognizance to the Grievor's contribution towards the consequential action taken against him contrary to section 230 (2) of the ERA 2007".

7. The worker's contract was to end on 18 August 2017. It was extended by three months until 18 November 2017. The contract provided that the respondent's employment would be reassessed on the appellant's "business needs and the requirements for the position or the position in its form under the contract". There was no further extension. He was also not given a new contract. He was informed in writing that there would be no renewal on 16 October 2017, a month before the extended contract expired.

8. The tribunal stated that if the employer had wanted to not renew the contract, it should have clearly advised the worker prior to sending him on forced leave. Extending the worker's contract for three months after the expiry of the initial contract, gave rise to a legitimate expectation on the part of the worker that his contract would be renewed. On that premise, the tribunal concluded that non-renewal of the contract was unfair and unlawful.
9. Clause 16 of the contract of employment provides that the contract is for three years from the commencement date. The worker accepted the extension of the contract by three months until 18 November 2017.
10. In his testimony, the respondent said that he told the chief executive officer there was no issue about sending him on annual leave and in not renewing his contract. He was concerned about verbal allegations made against him. The allegations refer to a statement made at a discussion with Manoj Kumar, the financial controller. Mr. Kumar had alleged that purchases were not properly carried out by the corporation. Neither party summoned Manoj Kumar. The evidence shows that no allegations were made against the appellant in writing.
11. In the employment grievance made to mediation services, the respondent says the employer made verbal allegations against him and decided to terminate his services. The respondent's evidence does not show that the employer made any serious allegation of impropriety. This is shown by his interactions with the chief executive officer and the human resource manager. His employment was not terminated. However, the respondent's contract was not renewed on expiry, after giving him notice of non-renewal.
12. Court agrees with the appellant's contention that the respondent cannot have a legitimate expectation to the renewal of his employment contract. After the worker's contract expired, there was no mutual agreement to renew the contract. The extension of the contract over a short period for the purpose of a review gave the worker no rights or expectation. The tribunal does not say the basis on which the principle of legitimate expectation has been applied to the present case, within the sphere of a private contract between the appellant and the respondent.

13. The appeal is allowed.

ORDER

- A. The tribunal's order dated 14 October 2019 is set aside.
- B. Parties will bear their respective costs.

Delivered at **Suva** on this 24th day of January, 2024



M. Javed Mansoor
Judge