

IN THE EMPLOYMENT RELATIONS COURT AT SUVA

APPELLATE JURISDICTION

CASE NUMBER: ERCA 02 of 2019

BETWEEN: **iTAUKEI LAND TRUST BOARD**

APPELLANT

AND: **iTAUKEI LAND TRUST BOARD EMPLOYEES ASSOCIATION**

RESPONDENT

Appearances: Ms. Suveinakama for the Appellant.

Mr. D. Nair for the Respondent.

Date/Place of Judgment: Wednesday 31 July 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 employer had unjustifiably terminated the work of the worker.

Cause and Background

1. The employer appeals against the decision of the Tribunal on its finding that the worker was unlawfully dismissed from his employment and as such the employer was to pay compensation equivalent to 3 months' in salary. The employer was also ordered to pay costs of the proceedings in the sum of \$500.00.
2. The worker in question is Joveci Baleivalu. He started work on 21 January 1987 as a Trainee Estate Assistant and worked his way through the ranks to that of an Estate Officer.

3. On 7 February 2007, a suspension letter was issued against the worker to investigate him for allegations by the landowners of Malomalo Village Nadroga to the Military for unpaid royalties by the iTaukei Land Trust Board. The allegation was that the landowners had not received the royalty payments. The same amount of royalty monies were allegedly given to the worker instead.
4. An initial investigation was carried out by the Internal Auditor to see if there were any breaches of the Terms and Conditions of Employment ("*TCE*") by the worker. On completion of the investigation, it was recommended that a further investigation was needed as new breaches of the TCE were uncovered.
5. A second suspension letter was therefore issued on 23 February 2007. The investigation was carried out by the Manager Asset Management.
6. The worker was terminated on 5 March 2007 for taking monies from a Contractor Mr. Sahib of Mohammed Sadiq and Sons. This contractor was a direct client of the employer as he paid royalties to the Board.
7. The worker admitted receiving the monies tabulated below. However he said that the money was given for his father's reguregu and as loan by the contractor Mr. Sahib.

<i>Date</i>	<i>Cheque Number</i>	<i>Amount</i>
16.12.05	164129	\$500
21.12.05	164143	\$2000
19.1.06	164191	\$1000
23.3.06	164340	\$1000
2.4.06	164391	\$250
4.5.06	196764	\$500
23.6.06	196869	\$1000
	TOTAL	\$6250

Tribunal's Findings

8. The Tribunal found that the investigation report contained evidence of witnesses who did not give evidence. It therefore found that the employer could not put credible evidence before the Tribunal as the evidence of the witnesses were not tested.
9. The Tribunal further found that the duty to pay royalty belonged to the licensee and Mr. Sahib was not the licensee. The landowners were. There was therefore no contractual relationship between the employer and Mr. Sahib.
10. The Tribunal said that it was unfortunate that the employer was unable to produce Mr. Sahib to testify in the matter. The Tribunal said that it assumed that any evidence given by Mr. Sahib would not have assisted the Tribunal.
11. The Tribunal noted that Mr. Sahib paid a sum of \$6,250 to the Board on 1 February 2007.

The Appeal

12. The issue on appeal is whether the worker's admission of receiving monies from the contractor Mr. Sahib was sufficient to hold that the worker had breached the terms and conditions of his employment.

Law and Analysis

13. Let me start off with the issue of whether Mr. Sahib was a client of the employer. The answer is in the affirmative. The license to extract the sand was given to Josaia Nacika. Mr. Sahib was one of the contractors to extract sand. He was the one who paid royalties to the Board. Even that is a fact found by the Tribunal.
14. The fact that Mr. Sahib extracted sand and paid royalties made him a client of the Board.
15. The worker does not deny receiving the sum of monies from the contractor. He therefore breached clause 4.01 of the terms and conditions of employment.

16. The worker's explanation that he received that money for his father's reguregu and loan does not justify his stance. By dealing with a client of the Board and receiving monies either in form of loan or gift is an unofficial conduct that brings discredit to the Board.
17. Under clause 4.01, a worker is not to solicit or accept any commission, service, or gift, whether in cash or kind from any person or body engaged or likely to be engaged or interested directly or indirectly in affairs coming within the compass of the Board's activities.
18. The money for reguregu and loan comes within the definition of accepting service and gift. This conduct brings disrepute to the employer. In this case, it indeed brought the employer disrepute. The landowners did not receive the royalty. They complained to the military officers for their money.
19. The monies were being given to the worker. The worker and the contractor say that these monies were for different purposes but initially when the contractor was questioned, he stated that he paid the royalty to the worker.
20. Later, the contractor changes his version to maybe suit the worker's version. Whatever is the truth, the worker has caused the employer to be seen as an institution with employees who take money from contractors and give them work. The employer was entitled to protect its reputation.
21. What concerns me is that the Mr. Sahib gave the exact amount of monies due in royalty to the worker. He never paid the royalty. When questioned, he then pays the same amount again to the Board. This gives the employer a genuine basis to find that the worker has dealt with a client and put himself in a conflicting situation thus putting the reputation of the Board at risk.
22. Clause 4.01 of the terms and conditions of employment reads as follows:

"Code of Business Conduct

To enable NLTB to act as a responsible corporate citizen, the following code of ethics set the standard and the spirit of service, which is expected of any employee of the Board, and non-compliance with any of the provisions of the code below may result in disciplinary action. An employee shall:

- (a) Render faithful service, subject to law in affecting the aims and purposes of the Board especially as embodied in the direction of the employee's superior.*
- (b) In giving advice to the employee's superior do so without fear or favour.*
- (c) Place the employee's services to the best interests of the Board above personal interest or advantage.*
- (d) In the employee's official and unofficial conduct seek to manifest integrity and temperateness and avoid brining discredit on the Board.*
- (e) Strive to maintain and increase the employee's own competence and the efficiency of the Board.*
- (f) Be scrupulous and economical in the employee's use of the Board's services and property and neither misuse nor permit their misuse by others.*
- (g) Not use during the employee's employment or after, confidential information acquired in the course of the employee's employment.*
- (h) Not solicit or accept any commission or service, or gift whether in cash or kind from any person or body engaged or likely to be engaged or interested directly or indirectly in affairs coming within the compass of the Board's activities.*
- (i) Not engage in activities which could adversely affect the efficient or impartial discharge of the employee's duties.*
- (j) Not attempt to influence any Member of the Board in any matter connected with the employee's employment in the service of the Board.*
- (k) Not take a lease of or license of native land, nor be a party to any dealing, in any manner whatsoever, with native land, without the prior approval of the General Manager.*
- (l) Safeguard and not disclose confidential information acquired in the course of the employee's employment.*
- (m) Refrain from public actions, works or criticism which are calculated to bring into disrepute the employee's colleagues, superiors or subordinates.*

(n) *Not accept private commissions or briefs to render professional services during working hours, with or without fees.*

(o) *Not engage in the private practice of the employee's profession in the employee's own time without the consent of the Board."*

23. The worker's admission that he received the monies from the contractor is sufficient to find that he breached the above terms and conditions of the employment.

24. I find that the employer had sufficient reasons to terminate the work of the worker.

Final Orders

25. In the final analysis:

a. *I allow the appeal and set aside the orders of the Tribunal that the worker was unlawfully dismissed and should be paid 3 months wages in compensation. I also set aside the Tribunal's order for costs against the employer.*

b. *The worker is to pay costs to the employer in the sum of \$3,500 within 21 days.*



.....
Hon. Madam Justice Anjala Wati

Judge

31.07.2024

To:

1. *iTaukei Land Trust Board, Legal In-House, for the Appellant.*
2. *Nilesh Sharma Lawyers for the Respondent.*
3. *File: Suva ERCA 02 of 2019.*