

IN THE EMPLOYMENT RELATIONS COURT AT SUVA

APPELLATE JURISDICTION

CASE NUMBER: ERCC 08 of 2018

BETWEEN: **AJESH KUMAR**

PLAINTIFF

AND: **LAND TRANSPORT AUTHORITY**

DEFENDANT

Appearances:

Mr. D. Nair for the Plaintiff

Ms. E. Dauvere for the Defendant.

Date/Place of Judgment:

Wednesday 31 July 2024 at Suva.

Coram:

Hon. Madam Justice Anjala Wati.

JUDGMENT

Catchwords:

Employment Law – Claim for Breach of Contract – Provisional Letter of Offer of Employment is not equivalent to a contract of employment- plaintiff had to fulfill certain conditions for the contract of employment to be given to him- he did not fulfill the conditions which were made known to him- the defendant was entitled to withdraw the provisional letter of offer of employment as the Plaintiff did not meet the conditions to be fulfilled for a proper contract of employment to be given to him- the plaintiff did not have a proper contract of employment to sue for its breach – plaintiff's claim is dismissed.

Claim

1. The plaintiff's claim arises out of his provisional letter of offer of employment which was withdrawn on the basis that the plaintiff did not comply with certain conditions for a full contract of employment to be given to him.
2. Through his claim, the plaintiff seeks a declaration that the defendant breached the contract of employment when it failed to perform its obligation to provide to the plaintiff work under the

contract and to inform him of the status of his employment which actions are said to be unjustified, discriminatory and in breach of the principles of fair labour practices.

3. The plaintiff further claims breach of his legitimate expectation and seeks specific performance of the contract of employment. He also seeks an order for payment of wages under the contract of employment.

The Defendant's Position

4. The defendant's position is that the plaintiff's claim is scandalous, irrelevant and otherwise oppressive as there was no binding contract of employment between the parties for the plaintiff to raise a claim.
5. The defendant says that the plaintiff was only offered a provisional offer of employment. He had to meet certain conditions before a proper contract of employment was given to him. He failed to meet the conditions. The defendant therefore withdrew the offer.
6. The defendant says that there was no contract of employment for the defendant to comply with.

Evidence, Law and Analysis

7. The plaintiff had filed an originating summons but the parties had to give oral evidence as there were controversial facts and affidavit evidence was not sufficient to resolve the issue.
8. The parties have not identified the trial issues. To deal with the claim, I had to work out the issues with reference to the position of the parties and the evidence before the court.
9. The issues in this claim is identified under different heads as follows:

A. Is the Letter of Offer an Employment Contract?

10. The letter of offer is dated 1 March 2018. It clearly states that it is a provisional offer for the position of a Driving Examiner. It was signed by the defendant on 1 March 2018.

11. The plaintiff accepted the offer of appointment on 1 March 2018 and stated that he was willing to start on 5 March 2018.
12. There was no contract of employment entered into by the parties.
13. The letter of offer dated 1 March 2018 clearly states that it is a temporary offer letter. The consequence of stating that the position is provisionally offered to the plaintiff means that the defendant did not offer a confirmed employment.
14. The plaintiff had signed the provisional letter of offer. He therefore agreed that the letter of offer was temporary.

B. What is the effect of a Provisional Letter of Offer?

15. A provisional letter of offer is contingent upon certain conditions being met. These conditions can vary depending on the employer and the specific circumstances of the job offer.
16. Normally a provisional offer may be made subject to the successful completion of background checks, reference checks, medical examination, drug tests, or other employment screenings. It may also be contingent on the prospective employee meeting certain conditions like providing certain documentation or completing specific paper work.
17. The provisional letter of offer does not guarantee a candidate employment. If the candidate does not meet the conditions, the prospective employer can withdraw the offer.

C. What were the Conditions of the Provisional Offer?

18. Normally the provisional offer will specify the conditions that needs to be met.
19. In this case, the provisional letter of offer did not specify the conditions to be met. The parties have different views on what the conditions were.
20. The plaintiff says that he had to meet the following conditions:

(a) *Surrender his Driving School Registration Certificate as he was operating a Driving School known as Executive Driving School.*

(b) *De-register the Driving School Business.*

21. The defendant says that the conditions that were to be met were as follows to avoid the plaintiff from having a conflict of interest:

(a) *Surrender his Driving School Registration Certificate;*

(b) *De-register his Driving School Business;*

(c) *Surrender his Driving Instructors Permit Number 72/2002; and*

(d) *De-register his Public Service Vehicle Number LT6394.*

22. I find that the defendant had to properly communicate to the plaintiff the conditions that he had to meet. The plaintiff agrees to only two conditions that he had to meet.

23. I see no reason why the defendant could not have written to the plaintiff and clearly outlined the conditions to be met. In absence of any clear directions from the defendant, it is only fair that the plaintiff be only expected to comply with the conditions which he understood the defendant required him to meet. Those conditions are to surrender his Driving School Registration Certificate and to de-register his Driving School Business.

24. The other two conditions which the defendant says needed compliance is the surrender of the Driving Instructors Permit and to de-register his public service vehicle number LT6394.

25. I am only prepared to hold that the two conditions that needed meeting were the ones outlined by the plaintiff.

D. Were the conditions to surrender the Driving School Registration Certificate and to De-Register the Business of Driving School complied with by the Plaintiff?

26. It is not disputed that the plaintiff did surrender the Driving School Registration Certificate.
27. The dispute is whether the plaintiff did de-register the driving school business and who had the responsibility to do it.
28. At the trial, the plaintiff accepts that he did not de-register the driving school business and that the defendant Land Transport Authority had to do it.
29. The defendant's position is that it is not in the Authority's power to de-register any business.
30. The plaintiff says that he was not aware that he had to de-register the driving school.
31. I find that the plaintiff is changing his stance in court. He clearly stated in his affidavit evidence in support as follows:

"On 1st March, 2018 I surrendered my driving school license and also de-registered the driving school registration ..."

32. The above paragraph establishes that he knew that he had to de-register the driving school business. He did not do it. It is an obvious conflict to have a business active and alive of this nature and work for Land Transport Authority as a Driving Examiner.
33. In any event, it is the plaintiff who registered his business. The plaintiff should de-register it too. The Land Transport Authority does not have authority to de-register the plaintiff's Driving School Business.
34. There is little point in surrendering the Driving School Registration Certificate when the business is active and alive. It is the operation of the business that would cause the conflict.

E. Could the Defendant Withdraw the Provisional Offer of Employment?

35. I find that the plaintiff did not comply with the conditions of the provisional letter of offer of employment and as such the defendant had to withdraw the offer.

F. Was the withdrawal of the Provisional Offer of Employment Communicated to the Plaintiff?

36. The plaintiff refutes that the withdrawal of the offer was communicated to him. The defendant has established through evidence that it posted a letter dated 24/04/2018 to the plaintiff's Postal Box Number 13039. The letter reads:

*"24 April 2018
Ajesh Kumar
P.O. Box 13039
Suva*

Dear Mr. Kumar,

Notification Towards Driving Examiner Valelevu Vacancy No. 89 Nov/17

We are writing to formally advise you that the Authority has reviewed the appointment for the Driving Examiner Valelevu position and have concluded that the position will be re-advertised.

We encourage you to apply for posted and advertised positions in the Authority for which you may qualify for in the future.

We wish you professional success with your job search in the future.

Thank you for considering Land Transport Authority as your possible employer.

*Yours Sincerely,
Signed
Mr. Sakeasi Tawaketini
Acting Manager Human Resources"*

37. I find that the withdrawal of the provisional offer was communicated to the plaintiff. In any event the plaintiff has still not complied with the condition to de-register the driving school business which was registered by him. He could not expect a full contract of employment.

38. If the plaintiff did not receive the letter in May, he would not have applied to another driving school for a job on 4 May 2018. On his evidence, he applied on 4 May 2018 to Nikhil's Driving School as an additional Driving Instructor for work.
39. The defendant says that the letter for a job at another driving school was written on 4 March 2018. The plaintiff says it is a typographical error and that it was written on 4 May 2018.
40. Umesh Chand of Nikhil's Driving School gave evidence and said that he received the letter on 4 May 2018.
41. I do not think that the defendant's contention that the letter was written on 4 March 2018 supports its case. Indisputably, the defendant received the letter by Umesh Chand on 4 May 2018. Umesh Chand had written to LTA on 4 May 2018, seeking permission to add the plaintiff as an additional Driving Instructor in his school. By then the defendant had decided to withdraw the letter of offer.
42. The defendant cannot say that the plaintiff was looking for other work that is why it withdrew the offer of employment. The decision to withdraw was made well before it received the letter from Umesh Chand.
43. I however find that the plaintiff only wrote for another employment when he received the letter from the defendant informing him that the position he was selected for was going to be re-advertised.

G. Is the Plaintiff entitled to the Declarations and the Orders Sought?

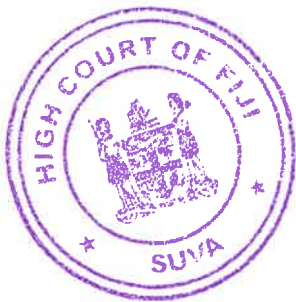
44. There was no valid contract of employment for the plaintiff to seek its enforcement.
45. The provisional letter of offer had conditions to be met and the plaintiff did not meet the conditions of the employment.
46. By its letter dated 24 April 2018, the defendant had withdrawn the offer of employment. If the plaintiff did not receive this letter of withdrawal then the plaintiff knew from the defendant's

actions that the offer was withdrawn. The plaintiff therefore proceeded to look for work on 4 May 2018.

Final Orders

47. In the final analysis, I make the following orders:

- a. *The plaintiff's claim is dismissed.*
- b. *Each party is to bear their own costs of the proceedings.*



Hon. Madam Justice Anjala Wati

Judge

31.07.2024

To:

1. ***Mr. D. Nair for the Plaintiff.***
2. ***Land Transport Authority, In- House Legal Department for the Defendant.***
3. ***File: Suva ERCC 08 of 2018.***