

IN THE EMPLOYMENT RELATIONS COURT AT SUVA

APPELLATE JURISDICTION

CASE NUMBER: ERCA 24 of 2018

BETWEEN: **TUCKERS EMPLOYEES AND STAFF UNION**
APPELLANT

AND: **GOODMAN FIELDER INTERNATIONAL (FIJI) LIMITED**
RESPONDENT

Appearances: Mr. D. Nair for the Appellant.

Ms. A. Harekishan for the Respondent.

Date/Place of Judgment: Wednesday 07 August 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 justifiable reasons to terminate the work of the employee- repeated breach of leaving work early without informing the Supervisor and without taking permission – worker should have sought permission in writing to leave early – he failed to do so – his earlier conduct coupled with the current one entitled the employer to treat the breach seriously- tribunal’s decision that the claim for unlawful and unfair dismissal be dismissed is upheld.

Cause and Background

1. The worker Salendra Sukul, through his Union, brings this appeal against the decision of the Tribunal dismissing his employment grievance for unlawful and unfair dismissal.

2. On 10 September 2014, the employer's planned work roster provided for employees to have shifts from 7.30am to 7.30pm for the week commencing 10 to 16 September. The employees including the worker was rostered to work the full shift (including overtime). The worker's shift was at the frozen goods site.
3. The practice was that if an employee was not able to complete the rostered and planned shift, they were to inform their respective Managers with reasons in writing.
4. On 16 September 2014, the worker was rostered to be at work as per the approved and planned shift, from 7.30am to 7.30pm. However, the worker left the frozen goods site at approximately 5pm. The employer alleges that he did so without informing/obtaining approval of his Supervisor Mr. Sundar Naidu or Manager Mr. Earl Hughes.
5. The employer conducted an investigation and concluded that the worker had breached the company policy. Before this incident, he was put on notice for another breach. For that breach, he was investigated and given a warning letter.
6. In that warning letter he was told that any further proven breaches of the code of conduct involving the same type of behaviour may result in further warnings and/or termination of his employment by way of dismissal.

Tribunal's Findings

7. The Tribunal found that it would have given the worker the benefit of the doubt but for the third incident which was when he told his Supervisor Mr. Sundar Naidu to lie on his behalf. The Tribunal referred to the correspondence of the worker's supervisor Mr. Sundar Naidu of 23 September 2014 and 24 September 2014.
8. In the first correspondence to the employer, Mr. Sundar Naidu had denied that the worker had seen him to leave at 5pm.
9. In the second email he said:

“Hi Earl. On Monday (22/09/14) morning at 8.00am, I called Salendra Nath Sukul (emp # 3181) in my office to hand over the letter you gave me on Friday (19/09/14) regarding the disciplinary meeting. I told him that the issue was that some staff including his went home at 5.00pm on Tuesday (16/09/14) that’s why there is going to be a disciplinary meeting. He can bring one of the Union reps to the meeting.

He wanted me to convince you that he had already informed me on Tuesday morning (16/09/14) to knock off at 5.00pm.

I told him that I cannot do it because it is not true and I have already had the discussion regarding this issue with you (Earl) on Friday (19/09/14).

*Regards,
Sundar Naidu (Production Coordinator).”*

10. The Tribunal found that the worker had asked his Supervisor to lie to the Production Manager and by doing that he breached the confidential relationship with the employer.
11. The Tribunal found that the employer had clear and incontrovertible grounds to justify its belief that there was gross misconduct.

The Appeal

12. The worker asserts that the Tribunal erred in law and in fact in:

(1) unreasonably relying on the purported letter of Sundar Naidu dated 23 Spetember2014 and email dated 24 September 2014 that was neither disclosed during the investigations nor in the submissions prior to the hearing of the grievance and this had greatly prejudiced the fair trial.

(2) disregarding the relevant evidence of the worker and his witness in arriving at the said decision in dismissing the grievance that denied the worker a fair hearing process.

- (3) upholding that the worker was given due process and investigation conducted when in the contrary the process lacked impartiality and independence which resulted in the denial of natural justice.*
- (4) not upholding that the normal working hours of work was 44 hours in a week and the overtime roster schedule prepared by the employer was done without any consultation with the worker.*
- (5) not upholding that the conduct of the worker did not constitute gross misconduct to work extra hours as it had to be done in agreement of both parties.*
- (6) dismissing the grievance when the employer failed to prove that the conduct of the worker constituted gross misconduct and warranted summary dismissal.*

Law and Analysis

13. The worker was terminated for:-

- (1) failing to complete his rostered hours of work without legitimate reasons and for not requesting in writing to leave early from work; and*
- (2) asking his Supervisor to provide a false statement to the Manager in regards to the request to leave early.*

14. The worker is complaining about the 2 documents relied on by the Tribunal. The first is a letter by Sundar Naidu dated 23 September 2014 and the second is the email dated 24 September 2014. The complaint is that these two documents were not disclosed to the worker.

15. Mr. Sundar Naidu had given evidence during the trial. He was the author of the two documents alleged to have not been disclosed by the employer. The worker had the opportunity to cross-examine the maker of the statements.

16. Even if the statements are ignored, the worker was not able to impeach the evidence of Mr. Sundar Naidu. The Tribunal believed Mr. Sundar Naidu. It was open to the Tribunal to do so. I have no cogent basis to find that the Tribunal was wrong in accepting the evidence of Mr. Sundar Naidu.
17. The worker also complains about lack of partiality and independence in the investigation process. The worker took part in the investigation process. It was a privilege that was extended to him. In summary dismissal cases this privilege is normally not received by many workers.
18. Further, the worker got a right in Tribunal to challenge the employer's findings. The worker was not able to successfully do so. It therefore cannot attack the independence and partiality of the investigation process.
19. The worker also complains about being rostered for overtime without his consent. I feel the situation is like a drowning man catching the straw. The worker was scheduled to work overtime. If he did not agree to the same, he should have objected to the roster then. He should have put his views in writing to the employer.
20. In absence of any disagreement, it is improper for me to find that the worker refused to work overtime.
21. Further, if he left early, he should have sought permission from his Supervisor. He was already on warning for a similar breach. In that case he should have written to his Supervisor and informed him that he wants to leave early and seek a written response.
22. The worker should have ensured that the Supervisor was informed well in time so that a replacement was found.
23. It is not sufficient for the worker to say he informed his Supervisor. If he did it orally, he did it at his peril. He was already under warning and he should have treated work more seriously.

24. Anything short of a written approval will not be acceptable as the worker had breached the orders of the employer before.

25. I too find that this was a serious breach as the employer expects its frozen goods section to be attended to, to avoid wastage and mishap. The worker had no regard to the employer's directions. The employer was entitled to treat the incident as gross misconduct in light of an earlier incident and warning.

Final Orders

26. I do not find any merits in the appeal and dismiss the same. Each party is to bear their own costs of the appeal proceedings.

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Hon. Madam Justice Anjala Wati

Judge

07.08.2024



To:

1. *Mr. D. Nair, for the Appellant.*
2. *Munro Leys for the Respondent.*
3. *File: Suva ERCA 24 of 2018.*