

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

000248

ACTION NO. 512 OF 1980

IN THE MATTER of the purported
Dismissal of ERONI RAIKOTI as
President and KORESI MATATOLU
Secretary of the National Union
of Electricity Workers

A N D

IN THE MATTER of an application
by ERONI RAIKOTI of Suva, Union
President AND KORESI MATATOLU
Union Secretary of Lautoka.

Mr. J.R. Reddy with Mr. A. Singh
for the Plaintiffs

Mr. S. Matawalu for the Defendants

J U D G M E N T

This is an application by way of originating
summons seeking the following relief :

- (A) A Declaration that a purported meeting of the National Executive of the National Union of Electricity Workers held at Lautoka on the 19th day of August, 1980 was unlawful and void and contrary to the Constitution and Rules of the said National Union of Electricity Workers.
- (B) A declaration that the purported dismissal of the said ERONI RAIKOTI and KORESI MATATOLU as President and Secretary respectively by the Defendants at the purported meeting of the National Executive of the National Union of Electricity Workers is unlawful and void and Contrary to the Constitution and Rules, of the said Union and/or Contrary to the rules of Natural Justice.
- (C) A declaration that the purported appointment of AFISAI V. TORA as the Secretary and/or the Acting Secretary of the National Union of Electricity Workers is unlawful and void being Contrary to the Constitution and rules of the National Union of Electricity Workers.

- (D) A PROHIBITORY INJUNCTION restraining the said APISAI V. TORA from purporting to act as the Secretary and/or the Acting Secretary of the National Union of Electricity Workers.

A number of affidavits have been filed. At the hearing an opportunity was given to both parties to call witnesses. The defendants called Mr. Francis Deo Ram to give evidence additional to that contained in his affidavit filed in reply to the affidavits filed by the two plaintiffs in support of their application.

The plaintiffs did not call any witnesses and relied on affidavits already filed by them.

One issue which must first be decided, is whether the second plaintiff, Mr. Koresi Matatolu, was at the relevant time General Secretary of the National Union of Electricity Workers which I will hereinafter refer to as 'the Union'.

In his affidavit Mr. Matatolu stated he was appointed Secretary of the Union at its Annual General Meeting held on the 26th day of April, 1980. Mr. Deo Ram in his affidavit denied that Mr. Matatolu was elected Secretary at that meeting or at any time and stated he was appointed organiser. In his evidence in chief Mr. Deo Ram said Mr. Matatolu was an adviser of the Union. Under cross-examination he at first said Mr. Matatolu was acting secretary on the 19th August, 1980 but later had to admit that Mr. Matatolu was elected secretary unopposed at the meeting held on the 26th April, 1980.

The letter of the 19th August, 1980 signed by Mr. Deo Ram and six other committee members (defendants 3 to 9 both inclusive) addressed to the two plaintiffs clearly refers to Mr. Matatolu as General of the Union. There is no doubt in my mind and I find as a fact that Mr. Matatolu was at the relevant time General Secretary of the Union.

There is no dispute that the first plaintiff was the President and that the third to ninth defendants both inclusive were committee members of the Union at the relevant

time.

It would have assisted the Court if the minutes of the last Annual General Meeting of the Union held on the 26th April, 1980 had been produced, as it is not known how many members were elected and made up the executive committee of the Union. They would also have disclosed Mr. Matatolu's position in the Union.

Rule 35 of the Union's Constitution provides that the Executive Committee shall consist of a President, two Vice Presidents, a General and an Assistant General Secretary, a Treasurer and not less than 5 nor more than 9 committee members. The Committee may number 11 or 15 members. Under Rule 36 a quorum for a meeting of the executive committee is either 50% of its members or not less than 6 members, if the committee has the minimum number of 11 permitted under Rule 35.

The seven defendants who are committee members could make up a quorum at an Executive Committee meeting of the Union if there are 11 or 14 members in the Committee.

The dispute between the parties according to Mr. Deo Ram arose when a committee meeting, which the defendants allege was to be held at Lautoka on the 19th August, 1980 was cancelled at the last minute, but only after they had arrived from all over Fiji at Lautoka to attend the meeting.

There is a conflict of evidence regarding this alleged committee meeting.

The first plaintiff in his affidavit stated he did not authorise the General Secretary Mr. Matatolu to convene a meeting of the executive on the 19th August, 1980 and that he did not convene it or receive any notice of it. As President of the Union under Rule 36 of the Union's Constitution no committee meeting can be held without the President participating in the decision to hold a meeting. As I will be referring to Rule 36 later this is convenient time to state the rule which is as follows :

"The Executive Committee shall meet at least four times a year and/or at such times and places as the President, General Secretary and at least three other members of the Committee think fit. In consultation with the General Secretary and President, a Branch Committee, through its Branch Secretary, may also request and be able to convene such. Not less than 50% (fifty per centum) or fewer than six persons (where the composition of the Executive Committee is the minimum as laid down under Rule 35) shall form a quorum for any of its meetings."

The second plaintiff in his affidavit, stated that on the 19th August, 1980 all the defendants, other than Mr. Tora, came to the Union office at Lautoka and demanded that there be a committee meeting there and then and he informed them that that was impossible as no meeting under the rules had been convened.

Mr. Deo Ram in his affidavit stated the plaintiffs called the meeting for the 19th August, 1980 to discuss the terms of negotiations with the Fiji Electricity Authority set for the following day and, that the second plaintiff purported to cancel the meeting after learning from one of defendants that he, Mr. Matatolo, would be questioned about the extravagant use of Union funds. Mr. Deo Ram says Mr. Matatolu chased the defendants away from the Union office.

When he gave evidence Mr. Deo Ram said he was approached by both plaintiffs on the 1st August, 1980 who asked him to call an executive committee meeting for the 19th August, 1980 to form a committee to negotiate a log of claims with the Fiji Electricity Authority. He said he rang the committee members who are stationed all over Fiji and informed them of the meeting. Mr. Deo Ram, who is stationed in Suva, said that on the 18th August the first plaintiff approached him and told him the meeting on the 19th August had been cancelled.

Despite this advice from the Union's President, Mr. Deo Ram and two other committee members, who no doubt would have been advised by Mr. Deo Ram about the cancelled meeting, all proceeded to Lautoka where they met the other four defendants who Mr. Deo Ram stated had not been advised

about the meeting being cancelled.

Mr. Reddy in cross-examination put to Mr. Deo Ram that Mr. Natatolu had said to Mr. Deo Ram there would be a meeting with the Authority on the 20th August, 1980 to discuss a log of claims provided that the Authority agreed to pay members travelling expenses and that there would not be an executive committee meeting but only a meeting to discuss the log of claims. Mr. Deo Ram denied he was told the meeting was conditional or that it was not to be an executive committee meeting but otherwise agreed with Mr. Reddy.

If it were not for Mr. Deo Ram's admission that he knew before the alleged committee meeting was to be held that it had been cancelled and had this knowledge before he left Suva with two other committee members for Lautoka, I might have been able to hold that a committee meeting had been called by the plaintiffs and had been cancelled only after all the committee members had gathered at the meeting place at the time scheduled. Mr. Deo Ram was not an impressive witness. Why did he not inform other committee members that the meeting had been cancelled? That question was not asked of him.

I do not consider that either of the plaintiffs or Mr. Deo Ram have been completely truthful. Holding that belief I do not feel inclined to make the first declaration the plaintiffs seek. In any event there is insufficient evidence before me to establish that in calling the alleged meeting Rule 36 was followed or that it was properly cancelled. The rule is badly worded. If as in this case, both the President and the General Secretary are in disfavour with the Committee the remaining committee members are left in a difficult position as Rule 36 does not enable them to call a meeting to take action against them. If the meeting was properly convened then conversely the President and/or Secretary alone cannot cancel it verbally unless the members agree. The proper course would have been to start the meeting and then adjourn it.

I am in a position to consider the other two declarations sought without having to make the first declaration.

To return to the story about what happened on the 19th August, 1980.

The seven committee members decided to hold the meeting they allege they had been summoned to attend. They had presumably the numbers to form a quorum. They proceeded to hold what they termed an Executive meeting in the Building Workers Union's office in Lautoka because Mr. Matatolu's alleged conduct precluded their meeting in the Union office. The third defendant as senior National Vice President chaired the meeting.

What were alleged to be minutes of that meeting were produced at the hearing. Although certified correct by the third defendant it is clear that the document produced is a combination of minutes and a report. There is reference to the first defendant being approached after the other defendants had purported to appoint him Acting General Secretary.

The so called minutes is a self serving document but I accept the minutes as evidence of the action the third to ninth defendants purported to take against the plaintiffs.

It is apparent that the seven defendants after holding their meeting on the 19th August, 1980 then on that date wrote a lengthy letter addressed to the two plaintiffs which I will shortly be referring to. They then apparently consulted Messrs. Matawalu & Company because on the next day that firm wrote to both the plaintiffs purporting to notify them that further to their letter of the 19th August, 1980 they were by that notice suspended from all their duties and functions with the Union for three months and that the Executive Committee would be recommending to the Annual General Meeting that they be dismissed.

Mr. Matawalu at the hearing contended that the action taken by the seven committee members at their meeting was suspension of the two plaintiffs and not their dismissal. It is clear that Mr. Matawalu appreciates that the Executive Committee is not empowered to dismiss an officer of the Union but it can suspend an officer for a period of up to 3 months.

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Rule 39 provides as follows :

"The Executive Committee may suspend for a period not exceeding three months and/or recommend for dismissal any officer, for neglect of duty, dishonesty, incompetence, or refusal to carry out the decisions of the Executive Committee, or, for any other reasons which it deems good and sufficient and in the interests of the union. Any officer who is suspended or who is recommended for dismissal shall have the right to appeal to the Annual or an Extraordinary General Meeting."

The Committee is empowered to dismiss staff.

Rule 40 is not clearly worded in particular as to purported power to appoint "such officers.....". It is as follows:

"The Executive Committee shall give instructions to the General Secretary and all other officers of the Union in regard to the conduct of the affairs of the Union. The Committee may appoint such officers, organisers and clerical staff as it considers necessary on such terms as it considers desirable and dismiss such organisers and staff for reasons which the Committee deem good and sufficient. It may appoint such sub-committees as it considers to be necessary."

"Such officers" in Rule 40 refer in my view to officers on the staff and not elected office bearers of the Union who are covered by Rule 39.

Rule 37 which I will refer to later empowers the Executive Committee to fill vacancies in the executive committee.

Both the President and the General Secretary of the Union are elected officers and they can only be removed from office by the committee if they are absent without satisfactory reason from three consecutive meetings (Rule 38). There is no evidence that Rule 38 has any application in the instant case.

Assuming that the purported committee meeting was constitutional, the next issue to consider is whether at that meeting they purported to dismiss the two plaintiffs or whether they suspended them. I do not consider there can be any doubt whatsoever but that the seven defendants

believed they had the power to dismiss the plaintiffs and purported to exercise that power to dismiss them. The minutes disclose that a no-confidence motion was passed against both plaintiffs. Then follows this passage :

"From today, therefore Eroni Raikoti and Hon. Koresi Matatolu are no longer President and General Secretary respectively of the National Union of Electricity Workers".

The passing of the no-confidence motion could not per se result in the plaintiffs being removed from office but the seven defendants clearly believed it did and intended that it should.

They proceeded then to appoint an acting President and General Secretary and in doing so they apparently purported to act under Rule 37 which is the only rule which empowers the committee to fill vacancies on the Executive Committee. Rule 37 is as follows :

"In the event of the death, resignation, or dismissal of any member of the Executive Committee between two Annual General Meetings or, when during such period, any member is unavoidably absent from the country and such absence is likely to extend for a longer period than is considered acceptable the candidate who secured the next highest number of votes in the ballot at the last Annual General Meeting shall fill the vacancy. If there is no such candidate, the Executive Committee shall, in its discretion, consider filling any vacancies in the principal posts of the Union by replacing such with current members of the same Committee with any subsequent replacement being sought from amongst the principal officers of the Branches. This should not preclude the Executive Committee from making temporary or appointment of other members of the Committee to act as replacement for the substantive holder of posts who may be absent for reasons associated with the trade union movement or notified and accepted by the Executive Committee. Provided that no provisions of the Trade Unions Act with regard to the delegation of authority, are breached and no officer has to perform dual functions which may not be compatible with other provisions in these Rules."

The rule is badly worded but the intention is clear. It does not cover a case where a committee member

is suspended from an office he holds. Nor does it permit in any event a principal post being filled by other than the candidate for that post who received the next highest votes at the last Annual General Meeting or if there is no such candidate by another committee member or by a principal officer in one of the Union Branches. The General Secretary is a "principal post".

The seven defendants letter of the 19th August, 1980 repeats part of the minutes about the no-confidence resolution and the extract therefrom which I have already quoted. On page 2 of the letter it is stated :

"Our authority for dispensing with both your services are derived from Clauses 39 and 40 of the Constitution".

There can be no doubt that the seven defendants purported to dismiss the two plaintiffs and appointed the first and second defendants as acting General Secretary and acting President respectively in their places. The rules did not empower them to take such action a fact which Mr. Matawalu appears fully to have appreciated when he sought by letter of the 20th August, 1980 to inform the plaintiffs that they had been suspended by the committee.

Mr. Matawalu also conceded at the hearing that if the plaintiffs had been dismissed such dismissal would be contrary to the rules of natural justice since neither of the plaintiffs had been charged with any offence or been given any opportunity to be heard.

I grant the second and third declarations sought by the plaintiffs and declare :

"That the purported dismissal of the said ERONI RAIKOTI and KORESI MATATOLU as President and Secretary respectively by the Defendants at the purported meeting of the National Executive of the National Union of Electricity Workers is unlawful and void and contrary to the Constitution and Rules, of the said Union and/or contrary to the rules of Natural Justice.

That the purported appointment of APISAI V.000257
TORA as the Secretary and/or the Acting
Secretary of the National Union of Electricity
Workers is unlawful and void being contrary
to the Constitution and rules of the National
Union of Electricity Workers."

As to the prohibitory injunction sought restraining Mr. Tora from acting as Secretary, I do not propose to grant the relief sought. Mr. Tora is an innocent party who in good faith accepted the acting appointment. I have no doubt that he will meantime accept the declaration that his appointment is void and will not seek to act as General Secretary.

There is another reason for not making the order. It is an undeniable fact that a large number of the Executive Committee, have no confidence in the plaintiffs. This is a very serious situation for the Union and unless the plaintiffs can regain that confidence the seven defendants may have the numbers at a properly constituted committee meeting to suspend the plaintiffs and recommend their dismissal to the Union members at an extraordinary general meeting of the Union. The first defendant may then be elected General Secretary at such meeting. An injunction in the form sought would prevent Mr. Tora accepting such appointment unless the order sought was varied or application was made to have it set aside.

While I have ignored the allegations made against the second plaintiff which appear in the minutes and in the letter of the 19th August 1980, it is clear that 7 members of the committee did foregather at Lautoka, whether for an executive meeting called by the plaintiffs or to take action to dismiss the plaintiffs is immaterial. They were debarred by the second plaintiff from using the Union's office for their meeting which they had every right to use.

In the circumstances I do not grant the plaintiffs costs of this action and would in any event not have ordered the first and second defendants to pay costs. As I have stated I do not believe either of the plaintiffs have told the whole truth and this is sufficient reason also to deprive them of costs.

R.G. Kermode
(R.G. KERMODE)
JUDGE

SUVA,
October, 1980.