

IN THE SUPREME COURT OF FIJI
Civil Jurisdiction
ACTION NO. 616 OF 1980

Between:

MESULAME NAINOCA PLAINTIFF

- and -

FIJI BROADCASTING COMMISSION DEFENDANT

Mr. Anand Singh for the plaintiff.
Mr. B.N. Sweetman for the defendant.

JUDGMENT

The plaintiff from the 26th July, 1972, until he was summarily dismissed was employed by the defendant (The Fiji Broadcasting Commission).

For some time prior to his dismissal his duties included production of current affairs programmes in Fijian and also weekly programmes.

One weekly programme he produced was NA I LALAKAI NI SIGA NI TURAGA a religious programme which the plaintiff also announced over the air on Sundays.

He conducted such a special programme on Sunday the 28th January, 1979.

A current topic discussed by the plaintiff on that programme was the controversial resignation of a Government Minister, Mr. James Shankar Singh. The

Minister resigned over the stand he took in connection with the signing of the new Sugar Cane Contract of General Application.

As a result of this programme the plaintiff was suspended on the 5th February, 1979. He was notified of his suspension in writing by a letter dated the 5th February, 1979, written to him by Mr. Hugh Leonard the General Manager of the Fiji Broadcasting Commission. In that letter Mr. Leonard informed the plaintiff that if he wished to advance reasons why he should not be dismissed he should do so without delay.

The plaintiff replied promptly by letter dated the 7th February, 1979. He sent a carbon copy of the letter to the Acting Secretary, Fiji Broadcasting Commission Branch of the Telecommunication Employees Union of which he was then a member.

The second paragraph of the plaintiff's letter is as follows :

"I had time to consider and ponder over the seriousness of the offence committed against the Commission's policies and I acknowledge my mistake in expressing my personal opinion. This, did not occur to me when producing the programme".

The plaintiff could not advance any reasons why he should not be dismissed but he explained what had happened and asked to be given another chance.

The plaintiff explained in his letter that he used Mr. Singh's resignation as an example to emphasise a basic Christian principle. In doing so he said he had unintentionally "crossed over the line of general remarks to personal opinion without realising it".

The plaintiff was summarily dismissed on the 13th February, 1979.

The plaintiff, although not an executive of the Fiji Broadcasting Commission, was a senior employee. He prepared his own programmes which were not subject to editing.

There was in existence in March 1973 a document prepared by the Fiji Broadcasting Commission setting out the basic policy of the Fiji Broadcasting Commission as regards news and current affairs programme.

The plaintiff was given a copy of this document but he says he was not told or warned what would happen if he was in breach of the policy. He says he never appeared before the Members of the Commission.

There was in existence at the time the plaintiff was dismissed an agreement dated the 29th January, 1979, between the Fiji Broadcasting Commission and the Telecommunications Employees Association covering salaried staff of the Fiji Broadcasting Commission. Under section 34(7) of the Trade Disputes Act the provisions of the said agreement are implied conditions of contract between the plaintiff and the Fiji Broadcasting Commission.

Under Article 10.2 the power to dismiss is vested in the General Manager of the Fiji Broadcasting Commission. It was Mr. Leonard who dismissed him. Article 10.3 spells out the dismissal procedure.

The first step is suspension of the employee and notification of that fact to the employee and the Union.

Mr. Leonard complied with the procedure.

The Union did not within 48 hours as provided in Article 10.3.3 make any representation to the Fiji Broadcasting Commission and by that Article such failure to do so is deemed to be notice that the Union did not intend to make

any representation.

The only issue in my view to be considered is whether the plaintiff's admitted conduct entitled Mr. Leonard to summarily dismiss him.

Section 28 of the Employment Act specifies the circumstances in which an employee may be summarily dismissed. The section states :

"28. An employer shall not dismiss an employee summarily except in the following circumstances :-

- (a) where an employee is guilty of misconduct inconsistent with the fulfilment of the express or implied conditions of his contract of service;
- (b) for wilful disobedience to lawful orders given by the employer;
- (c) for lack of the skill which the employee expressly or by implication warrants himself to possess;
- (d) for habitual or substantial neglect of his duties;
- (e) for continual absence from work without the permission of the employer and without other reasonable excuse."

On the facts before me, the plaintiff was dismissed either under (a) or (b) of section 28.

Mr. Leonard considered the plaintiff's broadcast a very serious breach of Fiji Broadcasting Commission's policy.

The written Basic Policy of the Fiji Broadcasting Commission is written in mandatory terms.

Mr. Leonard before he suspended the defendant drew his attention to three paragraphs of the Basic Policy which the defendant had not complied with. They are

paragraphs 1, 3 and 4 and are as follows :-

- "1. "The Commission will not express opinion on news and current affairs or on matters of public policy.
3. Controversial subjects must be treated with due impartiality with a view to assembling as much information as possible on the subject so that a balanced opinion will be achieved which will better inform the general public. In this regard it must be remembered that impartiality is not necessarily achieved by the presentation of two extreme views on a particular subject.
4. The compere of a news or current affairs programme and the reporter engaged in producing/presenting a segment of a programme, must have a basic sense of objectivity and must not reveal a personal commitment for, by doing so, he reduces his professional usefulness and credit-worthiness."

The three paragraphs of the policy quoted must be treated as standing orders. It is clear that the plaintiff disobeyed those orders.

It was a very serious breach of his duties because of the highly contentious feelings engendered by efforts to have growers sign the contract of general application and Mr. Singh's resignation because he could not agree with Government's handling of the issue.

The plaintiff's comments on Mr. Singh's resignation could have been construed as laudatory of Mr. Singh's stand by those who heard the broadcast.

Mr. Leonard's view was that the breach of basic Fiji Broadcasting Commission policy was so serious it justified the plaintiff being summarily dismissed. It was a severe punishment but in my view there was no breach by Mr. Leonard of the plaintiff's contract of service as alleged.

The plaintiff wilfully disobeyed lawful standing orders and he was lawfully dismissed.

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The plaintiff's claim is dismissed with costs to the defendant.

R. G. Kermode
(R.G. KERMODE)
J U D G E

S U V A,

30 ^{APRIL} ~~MAY~~, 1984.