

IN THE KIRIBATI COURT OF APPEAL  
CIVIL JURISDICTION  
HELD AT BETIO  
KIRIBATI

Civil Appeal No 3 of 2010

BETWEEN: ATTORNEY GENERAL IRO MINISTRY OF WORKS

Appellant

AND: ATANIBEIA KORIA  
TAOROBAMA MOAUA  
UEIN BURANIBWE  
MAKAUA BAAUA  
KATIIA KOORIO  
KAOBUNANG RABAERE  
TUNIA KAOTIRAKE  
TAABETI  
BATIBUNGA NOUATA

Respondents

Before: Tompkins JA  
Fisher JA  
Williams JA

Counsel: *Birimaka Tekanene* for appellant  
*Banuera Berina* for respondents

Date of Hearing: 12 August 2010  
Date of Judgment: 18 August 2010

## JUDGMENT OF THE COURT

[1] The respondent Korua was employed by the appellant Ministry of Works in terms of a series of letters each of which was expressed as offering him temporary employment for a period of two months but otherwise subject to the National Conditions of Service (NCS).

[2] The respondent was employed initially during the year 2003 for a period of two months (as set out in the first letter) and by a series of subsequent letters his employment was renewed every two months on

each occasion until the employment came to an end in 2008. The conditions of employment offered in each letter remained the same in each case except for the nomination of the relevant two monthly period.

[3] The question at issue is whether the respondent is entitled to be paid the benefits set out in the Sample Redundancy Agreement Appendix C1 of NCS which are due to a person employed full time and continuously from 2003 until 2008.

[4] Each letter stated:

"In accordance with B.19 of the National Condition of Service, I am pleased to inform you that you are offered a temporary employment in the Public Works and Utilities at the Construction Section on the following items:

- |                                      |                   |
|--------------------------------------|-------------------|
| 1. Date of and Period of Employment: |                   |
| 2. Designation:                      | SKILLED TRADESMAN |
| 3. Division:                         | Construction      |
| 4. Salary Scale (if applicable):     | Level 17/16       |
| 5. Salary in Employment:             | as above          |
| 6. Leave Rate:                       | Nil               |
| 7. Incremental Date:                 | Nil               |

No other privileges will be attached to the appointment, which may be terminated by one week's notice on either side.

Subject to the limitation of paragraph 1 you will otherwise be subject to the national Condition of Service and other terms and ruling as be promulgated from time to time".

(Each letter nominated a two monthly period of employment by reference to a date for commencement and termination).

[5] NCS B2 reads as follows:

*"Permanent Secretaries and Managers of Statutory Bodies may make appointments on temporary terms for period up to 2 months without reference to the Public Service Commission. Clearance on all temporary appointments should be sought from Permanent Secretary (PSO). Application for extension beyond 2 months must be submitted to the Public Service Commission.*

*Recruitment of Temporary appointees shall be conducted through the National Employment Register".*

[6] After his initial recruitment the respondent's employment was renewed as a matter of course by letter at intervals of two months. No application was ever made to the Public Service Commission for authority to extend employment beyond two months as required by NCS B2.

NCS B19 reads as follows:

*A Senior Responsible Officer is authorized to make an appointment on temporary terms without reference to the Public Service Commission for period of up to two months given that:*

- (i) It is to temporarily fill a vacancy or;*
- (ii) It is to cover the post of an officer who is absent or on leave;*
- (iii) Provided that there is an adequate financial provision in the estimates of the Organisation or Ministry concerned.*

[7] The Chief Justice decided that Koria was employed full time and continuously from 2003 until his employment was terminated in 2008. In so doing His Honour treated the series of letters as a device to avoid the need to refer an application for bi-monthly extensions to the Public Service Commission whilst retaining the employee as a temporary employee without the added benefits enjoyed by those in full time continuous employment.

[8] NCS A4(a) provides:

*"National Conditions of Service applies to employees of the Government, Statutory Bodies and Government Owned Companies of Kiribati and includes procedures for the conduct of business relating to those bodies, except where:-*

- (i) The contrary intention appears in National Conditions of Service;*
- (ii) Alternative provision is made for any particular employee in any Ordinance or in any regulation, rule, bye-law or order made under such Ordinance, or*
- (iii) The terms of an employee's appointment may preclude the operation of National Conditions or any other of them".*

[9] The terms offered to the respondent expressly limited the employment to being "temporary employment". This limitation was justified by NCS A4(a)(iii).


[10] However the failure to comply with NCS B2 when extending the employment beyond two months in any instance cannot operate so as to enable the Court to impose on the parties a different contract than that set out in the letter of offer.


[11] Strictly speaking a Public Servant may have exceeded his authority in terms of NCS B19 when he offered an extension of employment without submitting the case to the Public Service Commission but this does not enable a court to ignore the fact that only temporary employment was ever on offer.

[12] In addition to Korja there were eight other respondents in this case all of whom had been employed and claimed redundancy payment upon the same basis as Korja. We have used Korja's case to demonstrate the principles but the same conclusion will apply to all cases.

[13] For these reasons the appeal will be allowed and the respondents' claim will be dismissed. There will be no order as to costs in this Court.

  
Tompkins JA

  
Fisher JA

  
Williams JA