

COPY

IN THE SUPREME COURT OF NAURU

CIVIL ACTION NO. 12/2001

BETWEEN : **DAVID WATSON**

PLAINTIFF

AND : **CHIEF SECRETARY**

1ST DEFENDANT

NAURU AIR CORPORATION

2ND DEFENDANT

Date of Hearing : 5 November, 2001

Date of Judgment: 7 November, 2001

Mr. P. Aingimea for the Plaintiff

Mr. S. Lupalrea for the 1st Defendant

Mr. L. Keke for the 2nd Defendant

JUDGMENT OF MILLHOUSE, J.

The plaintiff has been employed by Air Nauru (a government agency) and now by the Nauru Air Corporation with one short break not relevant to this action, since 1979. He was

a Captain qualified to fly the B737-200 Series aircraft and flying one or more of them.

In April 1991, the plaintiff was given a written contract of employment. Up to that time he had not had a contract in writing. The term of the contract was expressed to be "for a period of three (3) years commencing from the 27th of July 1991". So it expired on 27th of July 1994.

On the 25th of April 1994, the Senior Administrative Officer of Air Nauru wrote to the plaintiff asking him whether he wished to seek renewal of his contract and the plaintiff replied that he did. On the 29th of June the plaintiff was advised that the renewal of his contract was not approved but this was countermanded on the 4th of August: -

.....

“I believe that your extension of contract has now been approved therefore for this reason I wish to inform you that my letter to you dated 29 June 1994 should be disregarded.”

However, there was further written agreement between the parties. Expiration of the written contract made no difference. The plaintiff continued on the same duties after the 27th of July 1994 as he had before.

Then Air Nauru substituted for its B737-200 Series aircraft, B737-400 Series aircraft. Pilots had to re-qualify to fly the later series. Air Nauru sent two groups of its pilots to Seattle for re-qualification. It did not send the plaintiff. So he could not continue his flying duties. For sometime after the change of the series his name appeared in the pilots' roster but no flights were assigned to him. Later his name disappeared from the roster. Later still his monthly salary stopped. No one

.....

said anything to him about leaving the employ of Air Nauru. He was in a state of limbo.

He approached several people in the hope of being re-trained and continuing flying. Nothing came of the approaches until he saw the then President and Minister for Island Development & Industry, the Hon. Lagumot G. N. Harris. The Minister wrote this letter to the plaintiff: -

“15 March, 1996

Mr. Dave Watson,
Pilot,
Air Nauru,
NAURU

This is to advise you that after careful consideration of your case, as discussed and in writing from you, I am unable to offer you my support to resume Line-Captain duties with Air Nauru.

Government is unable to maintain your current position and salary and it is advised that you might seek alternative employment. As your services with Air Nauru are no longer required you may see the Chief Secretary about the proper procedures of notification and termination of employment under the Public Service Act.

Your expertise and long term experience with Air Nauru cannot be ignored, however, and for that reason I would like to consider the possibility of identifying for you, as an alternative, a non-flying administrative function. Such a position may entail a reduction in salary and responsibilities, but would appear to be a sensible option at this time.

I thank you for what you have done for the country and the airline in the past, and it is my hope that the airline will be able to retain your services in a different capacity.”

The plaintiff replied: -

“19 March, 1996

Chief Secretary,
Government Offices,
Yaren.

Dear Sir,

This is to confirm that I have received today from His Excellency the President, as Minister for Island Development and Industry and also as Minister in charge of the Nauru Air Corporation, his letter of 15th March concerning my employment with Air Nauru.

I have shown the letter to Cr. P. Ribauw, the Chairman of the Nauru Air Corporation, and he advised me of the current situation and discussed possibilities for my continuing employment with Air Nauru including administrative duties as per the option given to me by His Excellency, the President, in his letter at paragraph three (3). I am prepared to consider employment in an administrative or other capacity as the Nauru Air Corporation see fit.

.....”

On the 22nd of July 1996 the plaintiff began working for the Nauru Air Corporation as Administrative Officer at a salary lower than he had previously enjoyed.

He is suing for the payment of his salary from 1st September 1995 (when it stopped being paid into the Bank)

until the 21st July 1996, the day before he began working again. He has sued two defendants, the Chief Secretary and the Nauru Air Corporation.

It was a mistake to sue the Chief Secretary. Pursuant to Section 11(2) of the Republic Proceedings Act 1972 the defendant named should have been the Secretary for Justice. On the 4th of September 2001 the Registrar of the Supreme Court gave the plaintiff leave to amend the Writ to allow for the substitution of the Secretary for Justice as first defendant. The order was made by consent. Mr. Paul Aingimea, for the plaintiff, told me he thought, with the Republic consenting, there was no need to file the amendment. Mr. Lupalrea confirmed that he had consented to the order and did not take the point at the hearing. The action proceeded. I order that the Writ be amended to substitute the Secretary for Justice as first

defendant instead of the Chief Secretary.

On the 1st of July 1996 Nauru Air Corporation, established by the Nauru Air Corporation Act 1995, took over from Air Nauru, the name under which up to that time, the Republic of Nauru had been operating the airline.

Section 42 of the Act provides: -

“42. The Corporation is the successor party in any contract where previously the Republic of Nauru when carrying on business as Air Nauru was the party.”

Whether the Corporation is liable at all to the plaintiff depends on whether on the 1st of July 1996 the plaintiff had a contract of service with Air Nauru. If he did not, then the Corporation is not liable.

Once the three-year term of the contract ended in 1994, the plaintiff continued to work for Air Nauru just as he had done before. But on what terms? After the 27th of July 1994 he must be taken to have been employed on the same terms and conditions as under the written contract – nothing was said by anyone to the contrary – except he had no fixed term. Counsel agreed that he was paid monthly and the pay slips (Exhibit P5) show that. After the term of the contract expired he was entitled only to a months notice of termination.

When, if ever, did he get the notice? The answer is in the letter of the 15th of March 1996 from the Minister. That letter not only tells the plaintiff that he no longer has the job but also contains the admission that, until then he had had a job – the letter is addressed to him as “Pilot” and says “ Government is unable to maintain your current position and salary”.

The plaintiff is entitled to pay in lieu of notice until 15 April 1996, a month after the letter. It follows that the plaintiff has no claim against the second defendant Nauru Air Corporation. By 1st July 1996 he had no contract with Air Nauru so there was no contract in which the Corporation became a party.

Having told Counsel of my decision, I invited them to make the calculations of damages based on it. They did so and agreed on the figures. I appreciate their having relieved me of the burden of the arithmetic.

Subject to the amendment of the Writ within 14 days, there will be judgment for the plaintiff against the defendant, the Secretary for Justice, for \$75,135.32. This sum includes interest to date. For the future the plaintiff is to have interest at 5% per annum until the judgment is satisfied in full.

The claim against the defendant, Nauru Air Corporation, is dismissed.

I will hear the parties on costs.

Robin Millhouse J

ROBIN MILLHOUSE, J.

A Certified True Copy
of the Original;

Sampath B. Abayakoon
SAMPATH B. ABAYAKOON
REGISTRAR, SUPREME COURT

