

AWARD

OF

THE ARBITRATION TRIBUNAL

OF

THE REPUBLIC OF THE FIJI ISLANDS

NO. 36 OF 2006

NO. 36 OF 2006

INTERPRETATION

of

AN AWARD

In the Dispute Between

HOUSING EMPLOYEES ASSOCIATION

and

HOUSING AUTHORITY

Union : Mr N Nawaikula
Authority: Mr V Maharaj

DECISION

In Award No. 27 of 1999 dated 30 July 1999 the Tribunal considered a dispute between the Housing Employees Association (the "Union") and the Housing Authority (the "Employer") concerning, amongst other things, the Employer's implementation of 44 redundancies without exhausting Articles 10 and 16 of the Collective Agreement.

By a letter dated 5 May 2005 one of the Grievors in the dispute, Tawake Tikoisuva, wrote to the Tribunal requesting an interpretation of that Award. The Tribunal ruled that the Grievor did not have the necessary standing to make the application for interpretation under section 27 of the Trade Disputes Act Cap.97 (See Award No.36 of 2005 dated 21 June 2005).

By letter dated 14 November 2005 Solicitors acting on instructions from the Fiji Bank and Finance Sector Employees Union have made an application for interpretation of the same Award in respect of the same Grievor. It is not clear to the Tribunal what has happened to the Housing Employees Association or under what circumstances the Fiji Bank and Finance Sector Employees Union became involved in the dispute to the extent that it instructed legal practitioners on behalf of this particular Grievor.

The application was listed for mention on 27 January and 24 February 2006. On 24 March 2006 the parties were directed to file submissions on the application. The Employee filed its submissions on 21 April and the Union did so on 25 May 2006.

When the application was called for mention on 26 May 2006 the parties informed the Tribunal that they sought a Ruling on the application based on the written submissions.

It is apparent to the Tribunal that what is sought in this application is not an interpretation of the Award but rather an attempt to make further submissions on an appropriate remedy in respect of the Tribunal's finding that the Employer had breached its obligations under clause 10 of the Collective Agreement. Paragraphs 4-6 on page 2 of the letter dated 14 November 2005 set out the

basis upon which the Union on behalf of the Grievor seeks to bring back the Dispute to the Tribunal.

"The Arbitration Tribunal found that the Respondent Company breached Article 10 of the Collective Agreement and breached its duty of observing procedural fairness, in implementing the redundancy of my client's employment and 43 other employees.

In addition, the Arbitration had further ordered that the parties were to make further submissions on the matter of an appropriate remedy. The Tribunal at the time could not order any specific remedy as there were no submissions made on the status of the employees (refer to ruling).

Since the passing of the said Award, several employees have settled their case by payment of financial settlement but my client has opted not to take up the offer as he firmly believes that in accordance with the award given, he was to be re-employed. In addition, he sincerely believes that the settlement amount offered by the Respondent Company is far less than what they were entitled to under the Award".

The letter also sets out some details of attempts made by the Grievor to settle the matter and the particulars of his claim for loss of salary and other losses.

At this stage it is appropriate to refer to the Award itself. On page 27, having concluded that the Employer breached article 10 and its duty of observing procedural fairness, the Tribunal stated:

"The Tribunal must now consider the question of remedies. Although the usual remedy sought in these cases has in the past been re-instatement, there are now new legal precedents that suggest that this is not an automatic remedy. Moreover, as a

practical matter, it has been some time since the redundancies were enforced. There is no evidence before the Tribunal as to the current status of the affected employees. In the circumstances, the Tribunal is compelled to make an interim award on this aspect of the dispute, and must invite the parties to make a further presentation thereon"

As part of its interim Award on page 30, the Tribunal stated:

"The Tribunal is to hear the parties further on the matter of appropriate remedy".

It is clear to the Tribunal that the Union is attempting to be heard further on behalf of the Grievor. Yet the application has been made on the pretext that it is an application for an interpretation of the Award. The process of interpretation involves a determination as to the true meaning of a written document. In this application the Union has not identified any aspect of the Award which would require the Tribunal to embark on such an exercise.

As a result the Tribunal has concluded that the present application does not fall within section 27 of the Trade Disputes Act.

It is noted that in Award No.31 of 2000 dated 22 December 2000, a Final Consent Award was handed down by the Tribunal in the following terms:

"The dispute is settled in terms of Memorandum of Agreement made between Housing Authority and Fiji Bank and Finance Sector Employees Union (formerly known as the Housing Employees Association) on 21 December 2000 (which is annexed to this Award)".

During the course of its decision the Tribunal commented on page 2 as follows:

"In accordance with the Interim Award, the Tribunal was to subsequently hear the parties further on the issue of an appropriate remedy.

On 22/12/2000 the parties appeared before me and I was pleased to be told that the parties had reached a settlement on the appropriate remedy and had signed an agreement to that effect incorporating the terms of settlement.

The Tribunal was also informed by the parties that the agreement effectively settles the dispute before the Tribunal"

As a result the Tribunal is now functus officio. Except for applications made under either section 27 or section 28 of the Trade Disputes Act, the Tribunal has no jurisdiction in this matter. The Tribunal has dismissed the application under section 27 on the basis that, although it purports to be an application for an interpretation, there is no issue of interpretation raised by the Union.

DATED

at

Suva this

16th

day of

June 2006.

W. Culanichini
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ARBITRATION TRIBUNAL