



## Employment Relations Tribunal

# Decision

**Title of Matter:** Meli Lasekula Bitu  
v  
Ba Provincial Holdings Company Limited

**Section:** Section 211(1)(a) *Employment Relations Act 2007*

**Subject:** Adjudication of Employment Grievance (Unjustifiable Dismissal)

**Matter Number:** ERT Grievance 159 of 2018

**Appearances:** Mr K Tunidau, Kevueli Tunidau Lawyers, for the Grievor  
Mr I Tikoca, Lal Patel Bale Lawyers, for the Employer

**Dates of Hearing:** Friday 11 October 2019

**Before:** Mr Andrew J See, Resident Magistrate

**Date of Decision:** 15 October 2019

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**KEYWORDS:** Section 236 *Employment Relations Act 2007*; Recovery of costs for successful party in proceedings.

### **CASES CONSIDERED**

*Timoci Katia Nakuta v Mariana Leweni*, Appeal No HBA 15/08L. 0579/2008 (12 December 2008)  
*Sanchez v Sheraton Fiji Resorts [2019]* [2019] FJET 28; ERT Grievance 165 of 2014 (17 July 2019)

- [1] On 3 September 2019, the Grievor in this matter was successful before the Tribunal in his claim for unjustifiable and unfair dismissal. The Tribunal assessed that the Grievor should be awarded six month's salary (\$26,100) for loss of compensation, with an additional amount of \$5,000.00 for the hurt and humiliation that he had suffered through the way in which his termination was brought about and in particular, the derogatory and humiliating language that was contained within the dismissal letter.
- [2] Consistent with the terms of the Order issued to the parties, the Grievor now makes application for costs in the amount of \$8,900.00. Those costs are detailed within that schedule as follows:-
- (a) Solicitor's costs (research, preparation for hearing and court appearance) \$7,000.00
  - (b) Travel costs – Lautoka to Suva – 2days \$1,600.00
  - (c) Photocopying and printing \$200.00
  - (d) Telephone, fax and email \$100.00

[3] Mr Tikoca of Counsel, naturally enough took issue with the brevity of submissions provided by Counsel for the Grievor in pressing the application. Though as Mr Tunidau rightfully pointed out, the underpinning guide for the Tribunal is that located at Section 236 of the *Employment Relations Act 2007*, that requires that only reasonable costs be awarded. There are various methods used by courts and tribunals when approaching such tasks and a useful overview is set out within the decision by Scutt J in *Timoci Katia Nakuta v Mariana Leweni*<sup>1</sup>.

[4] There are several guiding considerations, including the nature and length of the case; whether the position adopted by either party was unreasonable or vexatious; whether the matter could have been conducted in the absence of suitably qualified legal counsel; any delays or other procedural steps that caused additional costs to be incurred; and the legal complexity and nature of submissions. As can be seen in *Sanchez v Sheraton Fiji Resorts*<sup>2</sup> a moderation of costs sought will take place based on a range of relevant facts and factors.

[5] The case before this Tribunal had a good deal of complexity to it, relating to company conduct, the ostensible misuse of monies indirectly sourced through foreign aid and issues of lawful instruction. The questions of law adduced within the materials and oral evidence, required skilful legal attention and identified many issues, most of which were prejudicial to the Employer's case. Mr Tikoca was given the opportunity to make submissions in relation to what the Employer believed would be an appropriate cost award in the case, where costs followed the event. In fact, the cost hearing was adjourned in order to allow him to seek the views of his supervising partner. Following that adjournment, it was submitted that costs for legal counsel should fall within the range of \$1,000.00 to \$1,500.00 per day and for junior counsel, in the amount of \$500.00 per day. Mr Tikoca submitted that travel expenses should be confined to the amount of between \$350.00 to \$400.00.

[6] Having regard to the fact that on at least one occasion the hearing proceeded to 10.00pm, perhaps may give outsiders an understanding that this was no ordinary case. Counsel should not be deterred from representing employers or employees, for the simple fact that the case is time consuming or complex and that the likelihood of recovering costs is not great. To this end, there is a difference between costs and profits. A lawyer may charge a daily rate, but one needs to then reflect as to what constitutes her or his costs that are reasonable to recover, as opposed to what may be the 'asking price' some of which will be nothing other than desired profit. Two counsel appeared on behalf of the Grievor and one could argue that the work could have been undertaken by one person. That is not the situation however and if the preparation and advocacy meant two persons were to attend to the task, the question remains is it fair that the Grievor should not be compensated and able to recover his costs on that basis. The Tribunal believes that in the circumstances of this case, that he should. The case differs from *Sanchez* in relation to the level of complexity and so to that extent, the claim of \$7,000.00 as a starting point appears within the realms of what would be charged. An award representing approximately 70 per cent of that claim shall be made in the amount of \$5,000.00.

[7] In relation to travel, photocopy, telephone and out of pocket expenses, an amount of \$500.00 is considered reasonable.

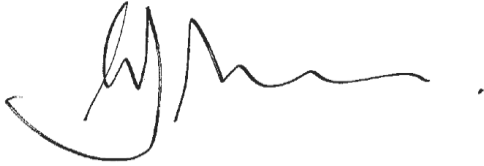
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<sup>1</sup> Appeal No HBA 15/08L. 0579/2008 (12 December 2008)

<sup>2</sup> [2019] FJET 28; ERT Grievance 165 of 2014 (17 July 2019)

**Decision**

[8] It is the decision of this Tribunal that the Grievor be awarded costs in the amount of \$5,500.00, to be paid within 28 days hereof.



**Mr Andrew J See  
Resident Magistrate**