

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

APPELLATE JURISDICTION

CASE NUMBER: ERCA NO. 4 OF 2013

BETWEEN: CARPENTERS FIJI LIMITED  
APPELLANT

AND: VILIAME DILIO  
RESPONDENT

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CASE NUMBER: ERCA NO. 5 OF 2013

BETWEEN: CARPENTERS FIJI LIMITED  
APPELLANT

AND: MERE RALOLO  
RESPONDENT

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Appearances: Ms. Prakash, D. for the Appellant.  
Ms. Devi and Ms. Daunabuna for the Respondent.

Date and Place of Judgment: Monday 17 February 2014 at Suva.

Coram: The Hon. Justice Anjala Wati.

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JUDGMENT

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CATCHWORDS:

EMPLOYMENT LAW - APPEAL - SUMMARY DISMISSAL - PROCEDURE ON TERMINATION.

LEGISLATION:

THE EMPLOYMENT RELATIONS PROMULGATION 2007 ("ERP"): ss. 33, 230 (2) (a), (b).

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*The Cause: Re Viliame Dilio*

- [1]. The Appellant appeals against the decision of the Employment Relations Tribunal ("ERT") of 11 February 2013 wherein on an unlawful dismissal case filed by the employee Mr. Viliame Dilio, the ERT held that the termination of the employee was unjustified but fair and awarded 18 months wages lost as a result of the grievance in favour of the employee out of which 6 months wages was to be deducted from the 18 months wages for the employees action that contributed to the grievance under s.230 (2) (a) and (b) of the ERP.

*Re: Mere Ralolo*

- [2]. At the ERT, Ms. Mere Ralolo also filed a case for unlawful and unfair dismissal. The ERT found that she was dismissed unlawfully but fairly. She was granted an order of reinstatement and 12 months wages in compensation out of which 6 months was to be deducted from the same for her actions which contributed to the grievance under s.230 (2) (a) and (b) of the ERP.

*The Background Facts.*

- [3]. Mr. Viliame Dilio and Ms. Mere Ralolo were permanent full time employees of Carpenters Fiji Limited ("CFL") at the time of the termination.

- [4]. Mr. Viliame Dilio was employed as Team Leader HP – Central and Mere Ralolo was employed as a Hire Purchase New Accounts Officer. Both were based in Nausori at the time of dismissal.
- [5]. Upon their dismissal, both parties filed separate actions at the ERT. Their cases were heard together at the ERT and ERC too.
- [6]. Mr. Viliame Dilio was dismissed summarily whilst Ms. Mere Ralolo was terminated with one weeks pay in lieu of notice.
- [7]. Mr. Viliame Dilio was terminated for gross misconduct and Ms. Ralolo too was terminated for the same reasons of gross misconduct.
- [8]. There was a customer named Mr. and Mrs. Sokoveti. They wanted to buy building materials from CFL on Hire Purchase. Mr. Viliame Dilio only had the authority to approve credit for building materials to an extent of \$500. The customers' credit application exceeded \$500 so the General Manager who had powers to approve the credit beyond F\$500 for building materials granted the customers conditional approval which was that the customer pays 50% deposit. Other conditions were levied too. Mr. Viliame Dilio then made a decision to alter the product code to be power tools and instructed Ms. Mere Ralolo to change the product code to power tools. Ms. Mere Ralolo did so when in fact the items purchased were building materials.
- [9]. The reason for changing the product code to power tools was to enable Mr. Viliame Dilio to approve the credit without resorting to the GM and without any conditions being levied on the hire purchase transaction.
- [10]. The employer carried out an investigation. Mr. Viliame Dilio agreed to the alleged act. He said the reason he did this was that, a day before the customers had come to him with the quotation. He had discussion with one Mr. Nand. Mr. Nand told him that the application should be alright since they were meeting the condition set by one Ms. Ashwini. The condition was 1/3 deposit, PG and bank deduction. On the day in question, when the customer came for approval of accounts, one Mr. Takala put a new requirement of 50% deposit together with other conditions. The customer

did not agree so on his discretion he made changes to the product code from building materials to power tools to allow him to approve the credit. He gave instructions to Ms. Mere Ralolo to prepare a new application. The confirmation between him and Mr. Nand was in his presence. He had also given some thought on the application and the system requirements before giving Ms. Mere Ralolo fresh instructions. Ms. Mere Ralolo was aware and did the fresh application on his instructions. He had never ever done this act before.

- [11]. On investigation Ms. Mere Ralolo agreed to have changed the product code from building materials to power tools to avoid head office approval.
- [12]. She said she did that because Mr. Viliame Dilio had instructed her to do so. She knew what she was doing was wrong. She has never done this before. It occurred to her that what she was doing was wrong and that she needed to inform some one in the head office but she respected her supervisor's instructions.

*Evidence at the Trial.*

- [13]. At the ERT 3 witnesses gave evidence. One was Mr. Nand for the employer and the other two were the two affected employees.
- [14]. Mr. Nand gave evidence that he was in charge of the Hire Purchase department of the employer and was responsible for co-ordinating and overseeing the operations of the High Purchase team for the Central Division.
- [15]. Both the grievors reported to him. Mr. Dilio reported directly to him and Ms. Ralolo reported to him through the team leader.
- [16]. The grievors attended to a customer who wished to purchase building materials from Carpenters Hardware on credit facilities from Carpenters Finance. Once the application was assessed, certain conditions needed to be met by the customer in order for the application to be approved. Only managers in the company have the authority to approve an application for building materials over \$500.

- [17]. Mr. Viliame Dilio did not have the powers or authority to approve credit application for building materials for more than F\$500, however, he had authority to approve credit for power tools so he instructed Ms. Mere Ralolo to change the product code to power tools to avoid head office approval. The customer however was purchasing building materials. Due to the internal check and balance system, the goods could not change hands.
- [18]. The decision was never put through to him to change the product code. The internal investigation revealed that the two had cheated the employer. They have high trust for frontline officers. The staff members have no authority to change product code.
- [19]. Ms. Mere Ralolo gave evidence that she was employed as a HP New Accounts Officer and was based at the Nausori branch at the time of the dismissal. She was responsible for interviewing customers, filling out the credit application form and forwarding it to the next person responsible for the assessment of the credit application. She was reporting to Mr. Viliame Dilio at the time. The customer Mr. Sokoverti came to buy building materials on the Hire Purchase. The Manager Mr. Takala gave instructions to the customers to meet certain conditions before the credit was approved. Mr. Viliame Dilio told her to change the product code to power tools. He told her that he had spoken to Mr. Nand. She spoke to Mr. Nand who said that he would be talking to one Mr. Takala but he did not give the approval. She was being investigated and she gave her statement.
- [20]. Mr Viliame Dilio also gave evidence. He stated that he was employed as a team leader. The first application for credit was beyond his limit of approval so he asked Ms. Mere Ralolo to change the product code to power tools so that he can approve by himself. He said that Ms. Mere Ralolo could have spoken to others to cross check. He should not have been terminated immediately. He should have been given a warning letter. There must be two warnings before the termination. He did not discuss the matter with Mr. Nand or anyone else. There was no disciplinary procedure. Mr. Nand's application can be put online too.

*The Findings of the ERT: Re: Viliame Dilio*

[21]. The ERT stated that it had to analyse two issues. The first was to find whether the termination was justified and the second was to find whether the termination was carried out fairly.

[22]. To find whether the dismissal was justified the ERT said it had to find whether the cause and procedure to terminate was correct.

[23]. The Tribunal found that the termination was unjustified because.

1. Mr. Viliame Dilio believed that he had the support of Mr. Nand and that it would be right to carry out the actions and that he would talk to Mr. Takala. Mr. Viliame also did not want to lose a customer. The goods did not change hands.
2. Mr Viliame was not accorded natural justice. He was terminated after a one sided enquiry. The employer cannot determine the guilt of any worker.
3. The employer should have awarded the following procedures to the employee.
  - i) Conducted a proper investigation into the alleged wrongdoing.
  - ii) Invited the employee to a disciplinary meeting where the employee should be told –
    - All information that was uncovered in the investigation;
    - To bring information of their own;
    - To bring a representative or a support person; and
    - That the outcome of the disciplinary process may be dismissal.
  - iii) At the meeting the employer should properly explain their information and give the employee a chance to respond to it and present their own information.

- iv) After the meeting, the employer should properly consider all the information with an open mind and inform the worker of the decision.

[24]. To find whether the termination was fair the ERT stated that it had to ascertain whether the employee was treated with fairness, respect and dignity.

[25]. The Tribunal determined that the employee was not unfairly treated or dismissed because the employee was given a termination letter. His dignity was intact. He knew his actions were wrong.

*The Findings of the ERT: Re: Mere Ralolo*

[26]. The ERT again stated that it had to analyse two issues. The first was to find whether the termination was justified and the second was to find whether the termination was carried out fairly.

[27]. The Tribunal found that the dismissal was unjustified because Ms. Mere Ralolo was acting on the instructions of her superior. The employer should have awarded the following procedures to the employee.

- i) Conducted a proper investigation into the alleged wrongdoing.
- ii) Invited the employee to a disciplinary meeting where the employee should be told –
- All information that was uncovered in the investigation;
  - To bring information of their own;
  - To bring a representative or a support person; and
  - That the outcome of the disciplinary process may be dismissal.

- iii) At the meeting the employer should properly explain their information and give the employee a chance to respond to it and present their own information.
- iv) After the meeting, the employer should properly consider all the information with an open mind and inform the worker of the decision.

[28]. The Tribunal determined that the employee was not unfairly treated or dismissed because the employee was given a termination letter. Her dignity was intact. The employee also knew that her actions were wrong.

***The Grounds of Appeal: Re: Viliame Dilio***

[29]. The appellant raised 12 ground of appeal:

1. *That the Learned Tribunal erred in fact and or misdirected itself as to the facts and in law in holding that the disciplinary and grievance procedure were not exhausted.*
2. *That the Learned Tribunal erred in fact and in law in holding that the Respondent was terminated "after a one sided inquiry" when the evidence produced did not support such a finding.*
3. *That the Learned Tribunal erred in fact and /or misdirected itself in law in evaluating the evidence in holding the view that 'from the evidence there was no natural justice' when the evidence did not support such a finding at all.*
4. *That the Learned Tribunal erred in law and or misdirected itself in law when it held that "all the circumstances at the time of the dismissal occurred would include the type, resource and the size of the organization" when the same has or did not have any bearing or relevance to the termination of the respondent.*
5. *That the Learned Tribunal erred in Law and in fact when it held that no attempt was made too accord all the fair procedures to the respondent when such a finding was not supported by evidence.*

6. *That the Learned Tribunal erred in law and in fact when it held that the respondent's termination was unjustified when such a view and or finding was not supported by evidence.*
7. *That the Learned Tribunal erred and or misdirected itself in law and in fact and or contradicted itself when it held that the termination of the respondent was unjustified on one hand and on the other hand also made a finding that the respondent was not unfairly dismissed.*
8. *That the Learned Tribunal failed to take into consideration or give adequate weight to the evidence as to the wrongful conduct or attitude of the respondent in that he deliberately gave instructions to amend the application for credit and approve the same when he knew that he had no authority to do so.*
9. *That the Learned Tribunal erred in law and in fact in awarding compensation to the respondent when such an award is not supported by evidence or in law.*
10. *That the Learned Tribunal erred in law and in fact in awarding and assessing the compensation awarded to the respondent.*

#### ***Alternate and Additional Grounds***

11. *That the Learned Tribunal erred in fact and in law in ordering reimbursement of 18 months wages to the respondent when it in fact it determined at paragraph 4.15 of the judgement that the "respondent was not unfairly dismissed".*
12. *That the Learned Tribunal erred in fact and in law in ordering reduction by 6 months of wages payable as compensation to the respondent when it in fact determined at paragraph 4.15 of the judgment that the "respondent was not unfairly dismissed" and as such there was no compensation payable at all.*

#### ***The Grounds of Appeal: Re: Mere Ralolo***

[30]. The appellant again raised 12 grounds of appeal as follows:

1. *That the Learned Tribunal erred in fact and or misdirected itself as to the facts and evidence in law in holding that the dismissal was not justified substantially and procedurally when the respondent herself gave evidence and admitted that she was instructed by Mr. Dilio to “amend the goods code on the application to “electrical goods” to avoid head office approval”.*
2. *That the Learned Tribunal erred in fact and in law in holding that the respondent was terminated “after a one sided inquiry” when the respondent herself admitted that she was interviewed by the company Auditor and she agreed that she changed the product code on the instruction of Mr. Dilio.*
3. *That the Leaned Tribunal erred in law and or misdirected itself in law when it held that “all the circumstances at the time of dismissal occurred would include the type, resource and the size of the organisation” when the same has or did not have any bearing on the termination of the respondent.*
4. *That the Learned Tribunal erred in fact and /or misdirected itself in law in evaluating the evidence in holding the view that “from the evidence there was no natural justice” when the evidence did not support such a finding at all.*
5. *That the Learned Tribunal erred in law and in fact when it held that Ms. Ralolo’s termination was unjustified when such a view and or finding was not supported by evidence.*
6. *That the Learned Tribunal erred in Law and in fact in holding that due process was not accorded to the respondent (refer page 9 paragraph 4.14) when such a view and or finding was not supported by evidence.*
7. *That the Learned Tribunal failed to take into consideration or give adequate weight to the evidence as to the wrongful conduct or attitude of the respondent in that she amended the application for credit on the instructions of her supervisor to avoid head office approval.*
8. *That the Learned Tribunal erred in law and in fact in reinstating the employment of the respondent when there was no evidence to support the decision.*

9. *That the Learned Tribunal erred in law and in fact in awarding and assessing the compensation awarded to the respondent.*

***Alternate and Additional Grounds***

10. *That the Learned Tribunal erred in fact and in law in ordering reinstatement of the respondent when it in fact determined at paragraph 4.15 of the judgement that the “respondent was not unfairly dismissed”.*
11. *That the Learned Tribunal erred in fact and in law in ordering reimbursement of 12 months wages to the respondent when it in fact determined at paragraph 4.15 of the judgment that the “respondent was not unfairly dismissed”.*
12. *That the Learned Tribunal erred in fact and in law in ordering reduction by 6 months of wages payable as compensation to the respondent when it in fact determined at paragraph 4.15 of the judgement that the “respondent was not unfairly dismissed” and as such there was no compensation payable at all.*

***Appellant's Submissions***

- [31]. The appellants counsel argued that both the employees had acted dishonestly. Mr. Viliame Dilio had deliberately and without authority decided to change the customers' product code to power tools. He authorized another employee to undertake the task. Ms. Mere Ralolo knew that she ought not to change the product code but she did so. This is misconduct on part of both the employees and warranted summary dismissal. In summary dismissal cases no procedure for discipline action or grievance is resorted to. The employer can dismiss instantly and give the employee reasons for his termination and pay him up to date wages. That was done in respect of Mr. Viliame Dilio and so there cannot be any more procedures awarded to the employee.
- [32]. It was argued that there was misconduct on the part of Ms. Ralolo as well but she was not summarily dismissed. Her contract provides for termination without cause

on one weeks' notice. The employer used this provision to terminate the employee. She was given one weeks' pay in lieu of notice.

- [33]. The appellants counsel submitted that there was not a one sided inquiry. The employees were given a chance to explain. They admitted to the actions after which the employer was left with no options but to carry out the dismissal.
- [34]. The appellant submitted that the type, size or resources of an organisation has no bearing or should have no bearing as to how terminations are done and should it not have a bearing on the termination process. It was further submitted that there was no evidence produced by the respondents to show that they were prejudiced due to the type, resource and the size of the organisation. The appellant only made its decision to terminate the employees once it was satisfied as to the gross misconduct.
- [35]. Since the dismissal was justified there was no need for compensation to be paid.

### *The Respondent's Submissions*

- [36]. The respondent argued that the employees were not given a chance to explain their positions. They were terminated after a one sided enquiry. There was lack of natural justice and the one sided enquiry led to a biased decision to termination. CFL is a massive business. It must have some disciplinary procedures in place to deal with its employees and ensure that procedural fairness is awarded to them. There was no procedural fairness. The employees were not given any investigation report or allowed an opportunity to respond to the allegations in the termination letter. Since the termination was unjustified the reimbursement of wages was given and that is in line with s. 230 (1) (b) of the ERP.

### *The Law and Analysis*

- [37]. Mr. Viliame Dilio was the team leader. He had authority to approve credit facilities on building materials up to \$500. One customer Mr. Sokoveti applied for credit

facilities for building materials. The General Manager placed some conditions on the HP being 50% deposit, PG and bank deduction. The customer was aggrieved and this culminated to Mr. Dilio trying to abuse his powers to change the product code to power tools so that he could circumvent the authority of the General Manager. He directed his junior Ms. Ralolo to change the product code. He said that one Mr. Nand told him that it was alright to go ahead and that he would speak to Mr. Takala. There was no approval given by Mr. Nand but Mr. Viliame Dilio still went ahead to change the product code.

- [38]. Mr. Viliame had acted insubordinate and dishonestly. He should have waited for written approval from Mr. Takala as there already existed his command to endorse and observe the conditions. He then directed his junior to be dishonest too.
- [39]. One, he was dishonest and two he is teaching others to disobey the system protocol. There was never any approval from Mr. Nand to go ahead to change the product code. If anything, Mr. Nand cannot change the policy. He had to wait for the Manager's instructions.
- [40]. Mr. Viliame Dilio knew or ought to know that by processing the application dishonesty Mr. Dilio did his best to cheat the system.
- [41]. I find dishonesty to be a gross misconduct. Some may tolerate it but objectively it is an offence which no employer can tolerate.
- [42]. If anyone says that it is alright to be dishonest I can only say that I am alarmed.
- [43]. In a case of dishonesty no procedure is required except instant termination, written reasons for termination and up to date pay. See. s. 33 of the ERP.
- [44]. However the employee was being investigated. He was been given a chance to explain himself. He admitted the allegations. The employer was not left with any choice but to carry out the termination.
- [45]. A termination letter was issued with reasons for termination given. The termination was carried out with respect and dignity. I find that the termination was justified and fair.

[46]. Ms. Ralolo also knew that what she did was wrong. She could have spoken to other superiors. She said she did speak to Mr. Nand who said he will speak to Mr. Takala. Given that, she should have waited for the approval. Knowing that her superior was wrong, she obeyed unlawful orders to the detriment of the employer. There was gross misconduct on her part to have changed and cheated the system without waiting for approval. She was terminated instantly but under the termination clause which provides for termination without cause upon one week's notice or an indemnity equivalent to one week's wages in lieu of notice.

[47]. Either way the termination was justified under s.33 and also under the contract.

[48]. Neither of the grievors are thus entitled to any compensation upon their dismissal.

### *Final Orders*

[49]. The orders of the Tribunal are wholly set aside.

[50]. I order that the termination was justified and fair and that the grievors are not entitled to any compensation.

[51]. The respondents are to each pay costs to the appellant in the sum of \$500 each.

**Anjala Wati**

**Judge**

**17. 02. 2014**

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**To:**

1. *Ms. Prakash for the appellant.*
2. *Ms. Devi and Ms Daunabuna for the respondent.*
3. *File: ERCA No. 4 of 2013.*