

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

APPELLATE JURISDICTION

CASE NUMBER: ERCA 7 of 2014

BETWEEN: PLANTATION ISLAND RESORT
APPELLANT

AND: NEMANI NASILIECE
RESPONDENT

Appearances: Ms. D. Gandhi for the Appellant.

Mr. D. Urai for the Respondent.

Date/Place of Judgment: Thursday 03 November 2016 at Suva.

Coram: Hon. Madam Justice A. Wati.

JUDGMENT

Catchwords:

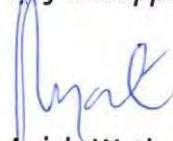
Employment Law – Awarding damages for unfair dismissal after making a finding that there was no dismissal which was unfair- facts must not be speculated to give basis for an award- An employee is not entitled to any notice when a fixed term of employment comes to an end.

1. The employer appeals against the decision of the Employment Relations Tribunal ("*ERT*") of 28 May 2014 wherein on the employee's claim for wrongful and unfair dismissal, the ERT found against the employee. It specifically found that there was no wrongful or unfair dismissal but ordered the employer to pay the employee 3 months wages as compensation for humiliation, loss of dignity and injury to his feelings.
2. The reason for awarding such a relief was because the ERT found that the employer should have given the employee written notice that his fixed contract had ended and that he was not required at work. In arriving at that conclusion the ERT found that since the employee was a tough character, the ERT felt that his feelings would have been injured when he was not told that he will not get another contract. I fail to comprehend the logic of the reasoning but that is what it is.
3. The employee worked for Plantation Island Resort ("*PIR*") as a joiner/carpenter on a seasonal or on call basis.
4. He was engaged on fixed contracts for 11 months. He has had three separate contracts. The first contract was from 28 June 2009 to 28 May 2010. The second contract was from 14 February 2010 to 14 January 2011. Lastly he was engaged under a third contract for the period 7 February 2011 to 7 January 2012.
5. Upon expiry of the third contract, the respondent was not engaged again for work. All the employees were advised in a meeting prior to the lapse of their contracts that they will not be engaged any further under new contracts as PIR had tendered for a construction company to carry out construction works.
6. PIR had further advised all the employees that it will give recommendation and assistance if required to obtain jobs under the new contractors or the construction company.

7. The employee was also given a recommendation to apply for new work and he was hired by the contractors.
8. The employee had also opted to take his outstanding annual leave before the expiry of his contract. He was on annual leave during the remainder of his contract.
9. The first ground of appeal complains about the award of remedy for humiliation, loss of dignity and injury to feelings in absence of any pleadings and evidence.
10. The second ground of appeal concerns the ERT's finding on the requirement for notice to be given when the employee was not dismissed but that his fixed term contract had come to an end.
11. On the first ground of appeal, I find that the employee did not give any evidence that he was humiliated when his contract came to an end. The ERT speculated that the employee was humiliated. The ERT had clearly stated in the judgment that ***"the Tribunal feels that his feelings had been injured"***.
12. For the employee to qualify for a remedy under this head, the employee must show that the manner in which the employer carried out the dismissal was humiliating and embarrassing which injured the feelings of the worker. There was no such evidence of dismissal. That was a finding of fact by the ERT even and there is no challenge to that finding in this Court. If there was no dismissal, there is no question about the fairness or the unfairness of the same.
13. The employee was on a fixed term contract and he knew well in advance that his contract would come to an end on a certain date. The contract in itself was sufficient notice as to when the contract would come to an end. There was therefore no legal or contractual obligation on the employer to furnish the employee with any other notice.

14. Moreover, the employee was told in a meeting that he would not be re-engaged and he was also given a recommendation to apply for a new job with the contractor. The employer had therefore made it very clear that there would not be any further re-engagement and therefore the employee should not have had any legitimate expectation of a new contract.
15. Since the contract in itself was sufficient notice about the date when the contract would end, I find that the appellant is correct in asserting by its second ground of appeal that the ERT was in error of law in making a finding on the requirement of written notice to be served on the employee.
16. The ERT also makes contrary findings of facts. First it found that the employee was a tough character then in the same vein it finds that as a result his feelings would be injured. There was no evidence to this effect and the ERT erred in fact in arriving at that conclusion.
17. Based on the above, I find that the award for 3 months wages for humiliation, loss of dignity and injury to the worker's feelings is not justified and must be set aside.
18. In regards the issue of costs of the appeal proceedings, on the evidence, this employee seems to have been more or less given false hopes by the Union that he has a legitimate cause of action. As a result of the Union's advice, he ended up in Court.
19. If the Union had sued in its name, I would not hesitate to grant costs against it but since the employee in person is the party to the cause, having seen his financial background and ability to earn, any order for costs would be more burdensome to both the parties than compensatory. I therefore will not make any orders for costs against the employee.
20. I make the following orders:
 - (a) *The award for 3 months wages to be paid by the employer for humiliation, loss of dignity and injury to the worker's feelings is set aside.*

(b) *Each party shall bear their own costs of the appeal proceedings.*



Anjala Wati

Judge

03.11.2016



To:

1. *Messrs. Neel Shivam Lawyers for the Appellant.*
2. *Mr. Daniel Urai for the Respondent.*
3. *File: Suva ERCA 7 of 2014.*