

IN THE EMPLOYMENT RELATIONS COURT

AT LAUTOKA

APPELLATE JURISDICTION

CASE NUMBER:

ERCA 06 of 2018

BETWEEN:

PRIYA PAYAL CHAND

APPELLANT

AND:

LAND TRANSPORT AUTHORITY

RESPONDENT

Appearances:

Mr. D. Nair for the Applicant.

Mr. E. Maopa for the Respondent.

Date/Place of Judgment:

Friday 14 February 2020 at Suva.

Coram:

Hon. Madam Justice Anjala Wati.

A. Catchwords:

Employment Law – Whether reinstatement ought to have been granted as a proper remedy upon a finding of unlawful dismissal being made?

B. Legislation:

- 1. The Employment Relations Act 2007 (“ERA”): s. 230.*

Cause and Background

- 1. The employee appeals against the decision of the Employment Relations Tribunal (“ERT”) for not reinstating her upon finding that the employer had unlawfully terminated her from her employment.*

2. Priya Payal Chand was employed as a Customs Service Officer at the Land Transport Authority since 18 May 2015. She was summarily dismissed from her employment on 13 April 2017.
3. The reasons for her termination was outlined in the letter of dismissal dated 13 April 2017. I will outline the same:

“Re: SUMMARY DISMISSAL

1. *Following the deliberation based on a report received from the Manager Customer Services regarding the issue of your poor and abrupt performance, the Executive Management has further deliberated on the issue and has decided that you are hereby summarily dismissed with effect from 13/04/2017.*
2. *The Executive Management noted that you failed to follow directives, discharged poor service delivery and did not respond to emails sent from superiors. You also failed to renew vehicle registrations owned by Entec Limited and made an unwarranted statement.*
3. *Complainant’s expectation is that a CSO will conduct her duties and obligations according to Code of Practice and Procedures. However, the manner in which you have performed your duty is in contradiction of your job description and work ethics.*
4. *Given the seriousness of the breach, you have committed acts of gross misconduct on your part which results in summary dismissal. Therefore, you are kindly required to handover all LTA properties that is under your possession to the Regional Manager West and you are also to refrain from entering any LTA premises as an employee...”*
4. The employee filed an action against the employer for unlawful and unfair dismissal and sought an order for reinstatement and compensation for loss in pay and benefits.
5. The matter was heard by the ERT and a finding of unlawful termination made. The matter was heard undefended and the ERT found that the evidence did not support the allegations based on which the termination could be justified. The ERT proceeded to award the

employee 6 months' salary as compensation for unlawful damages and 5% post judgment interest.

Analysis

6. The only ground of appeal is that the ERT failed to reinstate the employee upon a finding of unlawful dismissal being made.
7. In her claim, the employee had sought an order for reinstatement and compensation for loss of pay and benefits which means that she wanted to be reinstated and paid back all salary since her date of termination until she was reinstated.
8. Since reinstatement was a specific relief that was sought, it was incumbent upon the ERT to consider whether reinstatement was an appropriate remedy. S. 230 of the ERA also outlines that one of the remedies that could be considered is reinstatement to the former position or one that is not less advantageous to the worker. However, the ERT did not even consider this aspect and proceeded to award loss of salary for 6 months without justifying why that is the most appropriate remedy in this case.
9. I therefore do not find that the employee's application was adequately considered by the ERT and in that regard the ERT erred in law and in fact in disregarding the aspect of a suitable remedy.
10. When it comes to the question of reinstatement with such a large employer like the LTA, I do not find that it is an inappropriate remedy. The employer is a statutory body and not owned by an individual person or company. It cannot be said that the relationship of the employee with the employer has soured to the extent that the two cannot work together. It also cannot be said that the employer cannot trust the employee.
11. All these matters might be of useful considerations where the employer is an individual or where there are a few directors or the company is privately owned. This situation does not apply to the employee.

12. I do not find that sending the employee back to the work will hinder anyone else's work and this includes the Customer Services Manager on whose complaint the termination took place. The Customer Services Manager is also an employee of LTA and does not own the institution. The position of a Customer Services Manager is senior to that of an employee and since one is in a supervisory role, there should not be any hindrance in the work of both the employees. If there are any personal issues between the two of them, it should be left behind and work at a professional front must be given priority.
13. I find that this employee must be reinstated although it is now 2 ½ years since her termination. She has not found work in anticipation of a ruling from this Court and it will be unjustified to hold her back from work.
14. Even if the position in which this employee worked is now occupied, the employer can always find a place for her which is not less advantageous to the worker.
15. The counsel for the employer has not submitted in the appeal why it does not wish to have the employee back to work. That was the material issue which should have been addressed instead of irrelevant issues such as that the finding of the ERT is an interlocutory decision and that leave to appeal was required.
16. The finding of the ERT was a final decision and not an interlocutory one. I do not find that any leave to appeal the decision is required by the appellant.
17. The LTA also submitted that since the matter was heard undefended, the proper procedure was to ask for a setting aside of the order. I find this argument illogical. If the employer was aggrieved with the decision, then it could apply for a setting aside. The employee who was there to present the evidence at the ERT can only appeal the decision if he or she is not happy with any aspect of it.
18. The next issue is whether the employee is entitled to all lost wages since the date of termination to the date of reinstatement. My answer is in the affirmative. There was no basis for the termination to occur. Due to the unlawful termination, the employee lost work.

Even with the order for reinstatement, injustice will still prevail as she would have lost out from being paid her wages until her reinstatement. She is therefore entitled to lost wages.

Final Orders

19. In the final analysis, I make the following orders:

- (a) The appeal is allowed and the remedies ordered by the ERT is set aside.*
- (b) That the employer must reinstate the employee to her former position or to a position which is not less advantageous to the employee. The order for reinstatement is with effect from 1 March 2020.*
- (c) That the employer must pay to the employee lost wages from 13 April 2017 to 1 March 2020 subject to payment of the statutory dues.*
- (d) That the employee shall have costs of the proceedings in the sum of \$1,500 to be paid within 21 days.*



.....
Hon. Madam Justice Anjala Wati
Judge

14. 02.2020



To:

- 1. Pillai, Naidu and Associates for the Appellant.*
- 2. Babu Singh & Associates for the Respondent.*
- 3. File: ERCA 06 of 2018.*