

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

APPELLATE JURISDICTION

CASE NUMBER: ERCA 16 of 2018

BETWEEN: **FIJI NATIONAL UNIVERSITY**
APPELLANT

AND: **PREM SINGH**
RESPONDENT

Appearances: Mr. R. Chand for the Appellant.

Mr. Romanu for the Respondent.

Date/Place of Judgment: Monday 22 November 2021 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

JUDGMENT

A. Catchwords:

Employment Law – Breach of Contract claim in the Tribunal when the employer failed to provide proper notice to the employee when the contract ended – appropriate damages – whether the employer’s conduct caused the employee any humiliation, loss of dignity and injury to the feelings of the worker.

Cause

1. The employer appeals against the decision of the Employment Relations Tribunal (“*Tribunal*”) of 31 May 2018 on its findings and orders that the employer Fiji National University (“*FNU*”) had breached clause 21 of the employment contract dated 7 March 2011

by not giving the employee the requisite 3 months' notice that his contract will not be renewed or a fresh contract will be given to him as required by the said provision.

2. It is on this finding that the Tribunal ordered the employer to pay to the employee 3 months wages being the notice period for breach of contract and further 3 months wages as compensation for humiliation, loss of dignity and injury to the feelings of the employee.
3. Before I go into the details of the Tribunal's findings, I must outline the background giving rise to the matter. The employee Prem Singh was employed by FNU as a Campus Coordinator for a period of 1 year beginning 2 March 2011 to 1 March 2012.
4. On the last working day, that is, on 1 March 2012, the FNU offered the employee one month's contract which the employee refused by an email dated 2 March 2012. He said in his email to the employer:

"Dear VC

Thanks for the offer of one month contract. This contract offer was made to me yesterday (my last working day under the old contract) at 4.06pm. This short term contract of a month is not acceptable to me.

I request that I be paid for my accumulated leave. According to the HRSS I have 121.56 hours of accumulated annual leave till the last pay day.

Please advise who I am supposed to handover.

Thanks.

Prem Singh".

5. Before the one month's contract was offered to the employee, he had been writing to the employer for an update on the status of his contract. He wrote to the employer on 10 and 26 February 2012 and also on 1 March 2012. There was no response from the employer. The employer only took action on 1 March 2012.

6. On 7 June 2012, the employee filed an action against the employer. His claim was for breach of contract. The monetary relief he sought was 3 month's pay being the notice period. He did not make any claim for humiliation, loss of dignity and injury to his feelings (*Form 1 Claim*).

Tribunal's Findings

7. In arriving at the conclusion that FNU had breached clause 21 of the contract, the Tribunal made a finding that there was bad faith on the part of the employer in not responding to the employee's concerns when he informed the employer of the expiry of the contract. According to the findings of the Tribunal, good faith required the employer to be responsive and communicative with the worker.
8. When a worker requests for a response and there is none from the employer, it can be frustrating and humiliating to the worker. To offer a contract of 1 month in the end, it meant loss of dignity to the worker and the FNU knew that the worker will not accept the same.
9. The Tribunal found that clause 21.2 of the contract of employment clearly stated that the employer was required to notify the worker at least 3 months before the conclusion of the contract, whether the contract will be renewed or otherwise. The employee was therefore being disadvantaged when the provisions of the contract was not followed.

Appeal

10. The employer appeals against the 3 months award for breach of contract and also the 3 months award for humiliation, loss of dignity and injury to the feelings of the worker. The employer raised various grounds of appeal in respect of the two sets of awards made by the Tribunal. In the submissions however, the appeal against the first award was supported with limited argument.
11. The gist of the appeal, in respect of the award for breach of contract was that the before the contract had expired, the employee had been given a month's contract which he refused to accept. It is his fault that he did not accept the one month's contract. At the time the contract came to an end, FNU was going through a restructure process and in the process of determining whether the position was needed.

12. In respect of the award for humiliation, loss of dignity and injury to the feeling of the worker, the employer's position is that there was no evidence to suggest that the employer's conduct had in any way caused the employee humiliation, loss of dignity and injury to his feelings.

Findings

13. Let me first of deal with the award that was made for breach of the contract. The basis of the award was clause 21 which is from the contract of employment. The provision is on renewal of contract. It reads as follows:

"21. Renewal of Contract upon Completion

21.1 Upon completion of the Term of this contract, both parties may, by mutual agreement, either renew this contract, or enter into a new contract.

21.2 At least 3 months prior to the expiration of the period of appointment under this contract, the FNU shall notify the Worker whether it intends to renew this contract or offer the worker a new contract. Should the employer fail to notify the worker on or before this date, this contract shall not be automatically renewed; instead, the employer shall pay the employee a sum equivalent to the employee's basic salary for the period by which such notification was delayed.

21.3 In the event the Employer and the Worker agree that the Worker shall enter a further contract on termination or completion of this contract, the continued service of the Worker will be recognized under the new contract so as to avoid any break of service and any accrued or pro rata entitlements will be carried forward into the new contract".

14. Clause 21. 2 is very clear. It simply means that the employer will notify the employee 3 months in advance whether his contract will be renewed or whether a fresh contract will be given to the worker. The 3 months, as per the second sentence could be counted until 1 March 2012.

15. There is no denial by the employer that it did not give the employee the 3 months' notice as required by the contract in absence of which the contract provides for payment in lieu of notice. I cannot fathom why the employer is trying to justify the delay by saying that it was going

through the restructure. That may be so but that should not mean that it gets the powers or the rights to act contrary to the contract.

16. The employer is also of the view that the giving of one month's contract is sufficient under the clause. I do not understand what interpretation it wishes to give to the contract but the offer was made too late in the day. It should have been made 3 months before and the employee has the right to refuse the renewal or the fresh contract. The employee is not bound by the offer. That is clear in clause 21.1.
17. What I however agree with the employer is that the second head of damages for 3 months for humiliation, loss of dignity and injury to the feelings of the worker is not justified. What the Tribunal did was to find that when the employer did not respond to his queries, the non-response caused him humiliation. It also found that when the employer offered the employee with the 3 months contract, it knew that the employee will not accept it as it would cause him loss of dignity.
18. Firstly, the Tribunal used the same facts to award damages under two heads. The facts it used to say that the employer was in breach of the contract was again used to award damages for humiliation, loss of dignity and injury to the feelings of the worker. Damages is awarded for humiliation, loss of dignity an injury to the feelings of the worker if the employer's conduct is such that makes him suffer. There was no claim made for this. Further there was no specific finding of the conduct of the employer and what was improper about that conduct that caused the employee to undergo these feelings.
19. Yes, indeed the employer did not respond within the required timeline but those are facts that are necessary to find whether there was breach of contract and if the same facts are used to grant damages under another head than the employer is unfairly disadvantaged by having to pay further damages which is duplicated.
20. The employee's position was that the delay in notification caused him stress which affected him physically and mentally. That is something that arose from the fact of the late notice, not that the employer's conduct was so adverse in treating the employee when dealing with him

when his contract came to an end was of a nature entitling him for compensation for humiliation, loss of dignity and injury to the feelings of the worker.

21. I find that the award for the 3 months for humiliation, loss of dignity and injury to the feelings of the worker is not justified and ought to be set aside. I understand that the judgment sum had been paid on the basis that the employee will refund the monies if he is not successful on the appeal.
22. I find that since the claim was allowed in the tribunal, the employee ought to have got some costs for the proceedings. If the employer had paid the 3 months' notice period, the matter would not have seen the day in Court. I therefore find that there should not be any costs paid to the employer in the appeal proceedings although it is partly successful.

Final Orders

23. The appeal is partly allowed. I affirm the orders of the Tribunal that the employer should pay to the employee 3 months wages for breach of clause 21 of the contract.
24. I set aside the order of the Tribunal awarding the employee 3 months wages for humiliation, loss of dignity and injury to the feelings of the worker. This award which has already been paid should be refunded to the employer within 21 days.

Anjala Wati

.....
Hon. Madam Justice Anjala Wati

Judge

22. 11. 2021



To:

1. *FNU Legal In – House for the Appellant.*
2. *Vama Law for the Respondent.*
3. *File: ERCA 16 of 2018.*