

IN THE EMPLOYMENT RELATIONS COURT
AT LAUTOKA
CIVIL JURISDICTION

ERCC 11 of 2020

BETWEEN : THE LABOUR OFFICER FOR AND ON BEHALF OF
ANDREW REDFERN

PLAINTIFF

AND : WYNDHAM VACATION RESORTS (FIJI) PTE LIMITED

DEFENDANT

BEFORE : M. Javed Mansoor, J

COUNSEL : Mr. S. Kant for the Plaintiff

: Mr. J. Apted for the Defendant

Date of Hearing : 23 June 2022

Date of Decision : 19 September 2023

DECISION

EMPLOYMENT LAW *Strike out – Action for damages – Dismissal – Misconduct – Defamation by employer – Recovery of unpaid sales commission – Jurisdiction of court – Sections 211, 218 and 220 of the Employment Relations Act 2007 – Order 18 rule 18 (1) of the High Court Rules 1988*

The following case is referred to in this decision:

a) *Salim Buksh v Bred Bank (Fiji) Limited [2021] FJHC 259; ERCC 2.2019 (27 August 2021)*

1. The plaintiff was employed as a sales consultant by contract of employment dated 8 February 2016. He was dismissed on 19 December 2019 for alleged misconduct. The plaintiff is claiming damages for non-payment of sales commission, unfair dismissal, humiliation and defamation.
2. The alleged misconduct is that on 13 September 2019, the plaintiff defecated on the floor of the defendant's male toilet. He denied the allegation. However, after interviewing the plaintiff, the employer terminated his services. The plaintiff pleaded that the allegation was not investigated and there was no evidence of misconduct by him. He alleged that the defendant permitted its non-managerial staff to view the incident, and that this had subjected him to defamatory comments, humiliation and also tarnished his reputation.
3. The plaintiff pleaded that the defendant failed to pay his commission of \$1,829.00, claiming that it was reversed due to cancellation of deals by customers.
4. By its statement of defence, the defendant denied the plaintiff's claims and stated that dismissal was based on its investigation of the matter. The sales commission was said to have been reversed due to cancellation of a deal handled by the plaintiff. The defendant stated that the claim lacked sufficient particulars, and pleaded that the statement of claim did not disclose a reasonable cause of action.

5. The defendant also moved to strike out the statement of claim under Order 18 rule 18 (1) of the High Court Rules 1988. The summons to strike out also stated that this court has no jurisdiction to hear the action.
6. At the hearing of the strike out application, the plaintiff submitted that his dismissal was unjustified, and that he was humiliated by allowing non-managerial staff to view CCTV footage of the entrance to the male toilet. The footage related to a period when he entered the toilet. The plaintiff, it was said, was entitled to sales commission in terms of his contract of employment.
7. The plaintiff submitted that he was entitled to damages in a sum exceeding \$40,000.00 and, therefore, it was apt to file the claim in this court.
8. In reply, the defendant submitted that this court has original jurisdiction only in respect of the matters specified in section 220 (1) and 221 of the Employment Relations Act 2007. The defendant submitted that the plaintiff's cause of action for unfair dismissal could only be brought as an employment grievance, which must be first reported to mediation services and, if not settled, referred to the Employment Relations Tribunal. The defendant referred to the decision in *Salim Buksh v Bred Bank (Fiji) Limited*¹ in support of its contention.
9. The defendant submitted that this court does not have jurisdiction over defamation claims and that in any event, no reasonable cause of action in defamation is pleaded. The defendant submitted that it is only liable for words it has published and that the plaintiff has not pleaded the material facts giving rise to a cause of action in defamation against the defendant.
10. The plaintiff's causes of action concern the dismissal of his employment, defamation by the display of camera footage and the recovery of his sales commission.
11. The definition of employment grievance in the Act includes a dismissal. The dismissal of the plaintiff's employment and the unfair manner in which it is said

¹ [2021] FJHC 259; ERCC 2.2019 (27 August 2021)

to have happened mean that the plaintiff has an employment grievance. This must, in the first instance, be referred to mediation services. If it is not settled by mediation, the mediator is required by section 194 (5) of the Act to refer the grievance to the tribunal for its adjudication.

12. Section 211 (1) (a) of the Act confers the tribunal with the jurisdiction to hear an employment grievance. The original jurisdiction of this court is set out in sections 220 (1) (h), (k), (l) and (m) of the Act. The Act does not confer on this court the original jurisdiction to hear an employment grievance excepting when it is allowed by the Act. The court will not assume jurisdiction where it is not conferred by law or where jurisdiction can be clearly implied. The scheme of the legislation does not give original jurisdiction to this court to hear an employment grievance except where it is allowed. The monetary limitation placed on the tribunal will not of itself permit the court to assume jurisdiction in relation to an employment grievance. The court may exercise original jurisdiction in respect of an employment grievance where the matter is transferred under section 218 of the Act. Therefore, this court has no jurisdiction to hear the plaintiff's employment grievance.
13. The complaint regarding defamation arises by the employer allegedly allowing non-managerial staff to see the entrance to the male toilet through a camera recording. By doing so the employer is said to have caused the plaintiff's image to be tarnished. As a result he was subject to defamatory comments and gossip. The pleadings do not give particulars of the way in which the employer's action resulted in defamatory material. The defamatory words are not stated. Nor is any defamatory material attributed to the defendant.
14. Acts of unfairness or humiliation at the time of dismissal could have been the basis of an employment grievance complaint. The pleadings do not disclose a reasonable cause of action in defamation against the defendant.
15. There lies a further impediment in bringing the action to this court. Section 220 (1) (m) confers original jurisdiction on this court to hear and determine

proceedings founded on tort relating to the Act. The present cause of action is not so founded.


16. The plaintiff stated that he was entitled to a sales commission of \$1,829.00 in terms of his contract of employment. The defendant denies the claim and states that the commission was reversed when a sale did not go through due to the plaintiff's fault. As the parties are in dispute, an adjudicating authority must make a finding on the matter. Section 211 (1) (d) of the Act makes provision for the tribunal to adjudicate on all actions for the recovery of wages or other money.
17. For the foregoing reasons, the defendant succeeds in its strike out application.

ORDER

- A. The plaintiff's action is struck out
- B. The parties will bear their respective costs.

Delivered at Suva on this 19th day of **September, 2023.**




M. Javed Mansoor
Judge