IN THE EMPLOYMENT RELATIONS COURT
AT SUVA
APPELLATE JURISDICTION

ERCA 08 of **2020**

BETWEEN : **CENTRAL TRANSPORT COMPANY LTD**

APPELLANT

AND : **THE LABOUR OFFICER**

RESPONDENT

BEFORE : M. Javed Mansoor, J

COUNSEL : Mr. N. Tofinga for the appellant

: Ms. P. Chandra for the respondent

Date of Hearing : 28 September 2022

Date of Judgment : 22 January 2024

JUDGMENT

EMPLOYMENT Unauthorised deductions from wages – Demand notice – No case to hear application – Employer's evidence not called

---

1. On 26 November 2019, the appellant was charged for failing to comply with a written demand by the Labour officer under section 247(b) of the Employment Relations Act 2007. The charges followed a complaint by an employee of the appellant, Narayan Murthi, that there were deductions from wages without his consent.

2. The appellant denied the claim and applied to strike out the proceeding saying it is statute barred. After hearing the parties, the Employment Relations Tribunal by determination dated 10 August 2019, dismissed the application and fixed the case for hearing.

3. When the matter was taken up for hearing on 24 September 2019, the labour officer, Navneel Shankar, and the worker, Narayan Murthi, gave evidence. After the respondent's case was over, the appellant's counsel, Mr. Tofinga, moved to file an application for no case to answer. On 22 May 2020, the tribunal determined that the appellant is guilty of violating section 247 (b) of the Act.

4. This appeal is against the tribunal's order dated 22 May 2020. The appeal raises the following grounds:

i. "That the learned Tribunal in the court below erred in fact and in law when he validated the demand notice issued on 6th February 2018 by the Labour Officer without taking due cognizance of the fact that apart from the amount claimed, the Court is also expected to determine fines of up to $100,000.00 contrary to his jurisdiction as stipulated in Section 211(2) (a) of the ERA 2007.

ii. That the learned Tribunal in the court below erred in fact and in law when he validated the demand notice issued on 6th February 2018 by the Labour Officer

without taking due cognizance of the fact that the Labour Officer himself failed to comply with the said notice by not issuing a Fixed Penalty Notice that is the precursor to any further legal proceedings under Section 247.

iii. That the learned Tribual in the court below erred in fact and in law when he determined that the respondent employer was guilty without hearing the said Employer.

iv. That the learned Tribunal in the court below erred in fact and in law when he validated the demand notice issued on 6th February 2018 by the Labour Officer without taking due cognizance of the fact that the Demand Notice was not properly instituted.

v. That the Learned Tribunal in the Court below erred in fact and in law when he implied that he was only obligated to consider the elements of the charge (statement of offence) without having to give due cognizance to the particulars of the charges.

vi. That the learned Tribunal in the court below erred in fact and in law when he failed to be fair contrary to section 216 of the ERA 2007, when he overlooked the failure of the Labour Officer to provide full disclosure to the Respondent Employer.

vii. That the Appellant reserves the right to amend/adjust and make better submission pending the receiving of the Court's records upon which the decision of 22nd May 2020 was relied on".

5. At the hearing of this appeal, the appellant submitted that the demand notice dated 6 February 2018 is void *ab initio*. It was submitted that the demand notice contained a clause to the effect that failure to adhere with the notice would result in the issuance of a fixed penalty notice of $5,000.00, and failure to pay the penalty would result in legal proceedings. The appellant submitted that the demand notice was void in terms of section 211(3), which limits a fine to $2,000.00 and imprisonment to 2 years. The appellant submitted that the tribunal should have

proceeded to hear the substantive matter if it was of the opinion that there is a case to answer.

6. The respondent submitted that a written demand was made by the labour inspector as the appellant contravened section 247(b) of the Act and, thereafter, charges were filed as it did not comply with the written demand. The demand related to the payment of wages in a sum of $2,915.00 to Narayan Murthi during the period 6 July 2014 to 24 January 2016.

7. The respondent submitted that the evidence showed that unauthorised deductions were made by the employer and that the offence was established. The respondent submitted that full disclosures were filed and served on the respondent employer prior to the hearing.

8. Section 247 of the Act makes it an offence if an employer commits any of the acts set out in the section or fails to comply with its requirements including the failure to pay wages in accordance with the terms of the employment contract. The enactment sets out the sentencing to be carried out upon conviction where an employer is guilty of the offence. Independently, section 214 of the Act provides for civil proceedings to be instituted for the recovery of wages or other money payable by an employer to a worker under an employment contract. In this case, proceedings were instituted under section 247, concerning the commission of an offence.

9. Section 262 of the Act requires proceedings to be instituted in respect of an offence within 12 months from the service of the demand for payment. This requirement was complied with as the demand for payment was served on the employer on 6 February 2018, and charges were filed at the tribunal on 26 November 2018.

10. The proceedings of 24 September 2019 show that at the end of the prosecution's case, the appellant's counsel moved to file a no case to answer application. No mention was made of leading evidence on behalf of the respondent. In its determination of 22 May 2020, the tribunal held that the employer is guilty of violating section 247 (b) of the Act. The ruling did not refer to the no case to

answer application. At the hearing of the appeal, counsel for the respondent was unable to explain the reason the appellant did not receive the opportunity to adduce evidence. Counsel did concede that the appellant had a right to be heard before the tribunal finally disposed the matter.

11. Fairness requires that the ruling be set aside and the appellant allowed to set up his defence through testimony. There is, however, no merit in the application for no case to answer. The matter will, therefore, be remitted to the Magistrates' Court to be continued from where it stopped.

ORDER

A. The decision of the resident magistrate made on 22 May 2020 is set aside.

B. The application for no case to answer is struck off.

C. Proceedings are to continue in the Magistrates' Court of Suva subject to the directives of the chief magistrate.

D. Parties will bear their respective costs.

Delivered at **Suva** on this **22nd** day of **January, 2024.**

M. Javed Mansoor
Judge