

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

APPELLATE JURISDICTION

CASE NUMBER: ERCA 01 of 2018

BETWEEN: **FIJI NATIONAL UNIVERSITY**
APPELLANT

AND: **DOREECE SINGH**
RESPONDENT

Appearances: Mr. B. Singh and Ms. R. Chand for the Appellant.

Ms. L. Mataigusu for the Respondent.

Date/Place of Judgment: Friday 7 June at Suva.

Coram: Hon. Madam Justice Anjala Wati.

JUDGMENT

Catchwords:

Employment Law – Appeal – whether the tribunal was correct in arriving at a finding that the employer did not have justifiable reasons to carry out the termination of the worker and whether it properly assessed the damages to be paid to the worker.

Cause

1. The employer appeals against the decision of the Employment Relations Tribunal ("***Tribunal***") on its findings that the worker's dismissal from work was unlawful and for the employer to pay her 6 months' wages.
2. Doreece Singh was employed as a Customer Service Officer in the Department of UniServices – Ancillary Units, based at Samabula Book Shop.

3. Doreece Singh had started her employment with the University since March 11, 2013. She had since been on a temporary appointment, initially as a Records Assistant, and then as a Customer Service, Procurement and Marketing Clerk. Her last appointment as a Customer Service Officer was from 25 July 2015 to 31 December 2015.
4. She was summarily terminated for 2 reasons outlined in her termination letter of 4 December 2015:
 1. *Processing into a student's account, named Niraj Kumar, sale of a 32 inch LED TV worth \$600 when he did not buy it; and*
 2. *Selling \$322 worth of sports item to Niraj Kumar without receipting it.*

Tribunal's Findings

5. The Tribunal did not at all deal with the allegation of processing sale of 32 inch LED TV on a student's account and instead dealt with the issue of whether the employer could establish that Doreece Singh stole the TV. Stealing TV was not the basis of the removal.
6. In respect of selling \$322 worth of sports item, the Tribunal said that there was no tested evidence of Niraj Kumar to this effect as he did not give evidence and as such the employer could not establish the allegations.

Appeal

7. On appeal, the employer challenges the findings of the Tribunal and says that the evidence established gross misconduct on the part of the worker which the Tribunal failed to analyse.
8. It also challenges the award of 6 month's wages on the grounds of excessiveness.

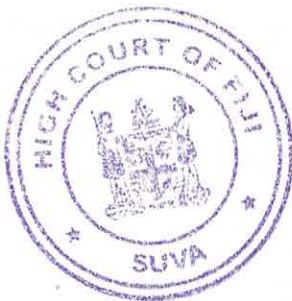
Evidence and Analysis

9. I will deal with the first allegation of processing sale of 32 inch LED TV in student Niraj Kumar's account as the Tribunal failed to address this allegation at all. I am in a position to analyse this evidence as there is transcribed evidence before me. I also have all the exhibits adduced in evidence.
10. Doreece Singh denies processing any transaction as such on Niraj Kumar's account.
11. There were two documents before the Tribunal. Both documents were generated by the employer. The first one appears on page 42 of the court records. It is a computer generated document signed by one Shivani Devi. It is dated 18 November 2015.
12. That document shows all transactions processed under Niraj Kumar's account. It indicates that on 24 June 2015, a sale and purchase invoice was issued by one Shivani. The corresponding receipt number was R123520 for \$600.
13. Another document appears on page 115 of the court records. It shows that Doreece Singh's user ID was used to generate the receipt number R123520 for the sale of the TV.
14. The 2 documents contradict each other. Whilst one suggests that Shivani Devi processed the transaction of sale of 32 inch LED TV, the other suggests Doreece Singh did it.
15. Doreece Singh's evidence was that she did not process the transaction and that the computer system is subject to manipulation as established by the 2 documents.
16. I find that if Doreece Singh processed the transaction, the electronic information generated from all aspects will show that she was the one who handled the transaction. It will not show 2 different names.
17. My concern is: why would Shivani Devi's name appear as having processed the transaction on the same day as Doreece Singh is alleged and shown to have processed it.
18. I find that the computer generated evidence is unreliable and does not establish the employer's allegation against Doreece Singh. There was no other evidence against Doreece Singh having processed the transaction. The only evidence was the computer generated information.
19. On the issue of not issuing receipts, the student had in his statement stated in no uncertain terms that he was served by another person. It was not Doreece Singh who served him. It was not Doreece Singh's responsibility to issue receipts for sales she did not carry out.

20. I do not find that the employer was able to establish that it had justifiable reasons to terminate the worker. The termination was unlawful.
21. In terms of what would be a proper remedy, I direct my mind to the fact that this was a temporary appointment until 31 December 2015. The worker was terminated in the beginning of December 2015 (4.12.2015). The employer should therefore only pay her for all the period of the contract, that is, wages for 1 month.
22. I find that the grant of 6 month's wages was excessive in light of the date of expiry of the contract. The worker was on a temporary appointment and the employer was entitled not to renew the contract.

Final Orders

23. In the final analysis, I allow the appeal in part. I disallow the appeal on the findings of unlawful termination. I find that the worker was unlawfully terminated.
24. I allow the appeal on the remedy awarded to the worker. I set aside the Tribunal's orders for payment of 6 month's wages and substitute it with an order to pay 1 month's wages within 21 days.
25. Since the employer is partly successfully in its appeal, I order each party to bear their own costs of the appeal proceedings.



Hon. Madam Justice Anjala Wati

Judge

07.06.2024

To:

1. ***FNU Legal In-House for the Appellant.***
2. ***Ministry of Employment, Productivity and Industrial Relations for the Respondent.***
3. ***File: Suva ERCA 01 of 2018.***