

IN THE EMPLOYMENT RELATIONS COURT AT SUVA

APPELLATE JURISDICTION

CASE NUMBER: ERCA 30 of 2017

BETWEEN: **FRINCOS HIRE (FIJI) LIMITED**

APPELLANT

AND: **SETAREKI TUIRABE**

RESPONDENT

Appearances: Mr. A. Pal and Mr. E. Navuda for the Appellant.

Mr. M. Young for the Respondent.

Date/Place of Judgment: Friday 16 February 2024 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

JUDGMENT

Catchwords:

EMPLOYMENT LAW - PRACTICE AND PROCEDURE - Trial completed by one Tribunal - New Tribunal takes over the matter and hears the worker again - No opportunity provided to employer to test evidence of worker or to produce counter-evidence- Breach of natural justice - Procedural unfairness - Miscarriage of justice - Judgment set aside.

Cause and Background

1. This appeal is on the question of procedural fairness and the appropriateness of the Tribunal in delivering a Judgment on the worker's claim for unlawful and unfair dismissal without further hearing the employer's evidence and without giving the employer a chance to cross examine the worker.
2. The matter was initially heard by a different Tribunal on 12 January 2016. Before a judgment could be delivered the Tribunals' term had come to an end. A new Tribunal took over to deal with the matter.

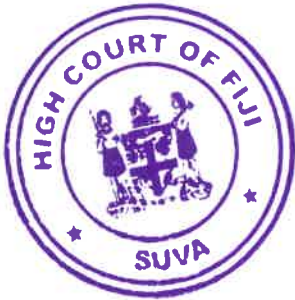
3. On 27 November 2017 the matter was listed before the Tribunal for a mention to see if the parties can settle the grievance.
4. The Tribunal then heard the worker's evidence. The parties were of the view that the questions asked off the worker was to enable the parties assist in settlement of the grievance. No one was prepared for the hearing on this day.
5. After hearing the worker, the Tribunal proceeded to deliver an ex-tempore judgment in which it found that the worker had been unlawfully and unfairly dismissed. It ordered the worker to be paid compensation in the sum of \$2,595.84 within 21 days.

Issue and Determination

6. The issue before me is whether the Tribunal could have proceeded to hear the worker only and give the judgment on the worker's claim without affording the same opportunity to the employer to test the worker's evidence and to produce its own evidence to address its position.
7. Firstly, the Tribunal should not have proceeded to adducing fresh evidence in the case when the matter was not fixed for hearing.
8. Even if it did, it ought to have provided both the parties with the same right to present further evidence. It could not restrict that right to one party alone.
9. Since it decided to hear the worker on 27 November, it should have provided the employer a right to cross examine the worker.
10. It should have also provided the employer with a right to produce relevant witnesses to challenge the evidence of the worker.
11. I do not find that there was procedural fairness given to the employer when the worker got an additional opportunity to tender further evidence and the employer denied a right to cross examine the worker and present relevant evidence.
12. Without the right to natural justice and fairness there was miscarriage of justice and the judgment on the grievance cannot be justified. If the employer was heard, its evidence ought to have been taken into account. That was not done. That itself affects the findings of the Tribunal.

Final Orders

13. I allow the appeal on the basis of procedural unfairness to the employer.
14. I set aside the judgment of the Tribunal and order that the matter be re-heard by the Tribunal within the next 3 months.
15. The parties are to enquire from the registry for a suitable date before another Tribunal.
16. Each party shall bear their own costs of the appeal proceedings.



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Hon. Madam Justice Anjala Wati

16.02.2024

To:

1. *A.P Legal, Suva for the Appellant.*
2. *Mr. M. Young for the Respondent.*
3. *File: Suva ERCA 30 of 2017.*

