

STATE v DISPUTES COMMITTEE AND PERMANENT SECRETARY FOR LABOUR AND INDUSTRIAL RELATIONS and 2 Ors; Ex parte PLANTATION ISLAND RESORT

5 HIGH COURT — CIVIL JURISDICTION

BYRNE J

22 June, 14 August, 14 September, 3 October 2001, 19 February 2002

10 [2002] FJHC 278

Industrial law — awards — judicial review — tribunal should give reasons for decision — tribunal's power to award 50% benefit to Respondent — Trades Disputes Act (Cap 97) s 5(4).

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Applicant sought judicial review with an object of setting aside and quashing an award given by a Disputes Committee. First interested Respondent alleged she was dismissed from employment and was awarded reinstatement and 50% benefits by the tribunal. Applicant alleged that tribunal failed to give reasons for its decision and that the tribunal

20 has no power to award 50% of the benefits to Respondent.

Held — The decision of the Disputes Committee went beyond its terms of reference. The committee was given power only to reinstate the 1st Respondent without loss of benefits. However, it had no power to reinstate her to her former position and be paid 50% of her benefits. The committee also erred in not giving reasons for its decision. Where a

25 decision to dismiss an employee for an arguably serious breach of her employment conditions was overruled, the Disputes Committee should have given at least brief reasons for disallowing the dismissal.

Judicial review allowed.

Cases referred to

30 *State v Transport Control Board and Pacific Transport Ltd; Ex-parte Mohammed Jalil Khan* HBJ No 27/94; *Sydney Wright v Minister for Immigration* HBJ No 2/1991, cited.

G.P. Lala for the Applicant

35 *R.S. Singh* for the 2nd Respondent

Judgment

Byrne J. The Applicant is the owner of a hotel known as Plantation Island Resort. It seeks judicial review, with an object of setting aside and quashing an

40 award given by a Disputes Committee on the 9th of April 2001 under public law powers and jurisdiction given by the Trades Disputes Act (Cap 97).

The 1st interested Respondent was an employee of the Applicant and a member of the 2nd interested Respondent. The 1st interested Respondent had

45 4 days sick leave commencing on the 10th of October until the 13th of October 2000.

At about 7 am on the 14th of October 2000 she asked her supervisor, Mr Bimal Deo to let her have the day off changing her rostered day off from the 12th of October 2000.

After her leave was approved she then went to clean the staff quarters and its

50 compound at the hotel. The Applicant alleges that together with another employee a Mr Ilaisa Vuinamotu she collected all the garbage and piled it up on

the main road at the entrance to the reception area, in full view of the guests at the resort. This area was not a designated rubbish station nor a rubbish collection place.

5 The Applicant alleges that when on the instruction of the General Manager Mr Patrick Wong a Security Officer Mr Simeli Gonewai started to clear the garbage. The 1st interested Respondent told him not to pick up the rubbish as she wanted the Health Department to see it. Hearing all this Mr Wong asked the 1st interested Respondent to see him in his office at 10 am but she did not do so. Because of this the Applicant suspended the 1st interested Respondent as she had
10 not given him any explanation for her act.

As a result of her being suspended the 1st interested Respondent was required to vacate her quarters and leave the resort property by 3 pm on 14th October 2000. On the 17th of October 2000 the management of the resort
15 had a meeting with the 2nd interested Respondent following which the 1st interested Respondent was dismissed from her employment with the resort.

A reference was made to the Permanent Secretary for Labour and Industrial Relations who then appointed a Disputes Committee to rule on the dismissal.

The terms of reference of the Disputes Committee were:

20 *Over the termination of Ms Jakaveti Labalaba with effect from 20th October 2000 which Union claims is harsh, unfair, unjustified and in breach of Clause 7 of the Collective Agreement. The Union therefore seeks that Ms Labalaba be reinstated without loss of benefits.*

25 On 9 April 2001 the disputes committee gave its decision which was as follows:

- (1) *that Ms Labalaba shall be reinstated to her former position with immediate effect;*
- (2) *that she be paid 50% of her benefits for the period 20th October 2000 to 8th April 2001.*

30 After reading affidavits filed on behalf of the parties, on the 22nd of June 2001 I stated that I would consider all the evidence and would accept submissions on the question of whether leave should be granted to apply for judicial review as submissions on a substantive motion to apply for judicial review.

35 The grounds on which the Applicant seeks review and an order for certiorari to remove into this court and quash the decision of the Disputes Committee are:

- (i) the Disputes Committee failed to give any reasons for its decision;
- (ii) that the decision of the Disputes Committee to award 50% of the 1st interested Respondent's benefit for the period 20th October 2000 to 8th April 2001 was irrational having regard to the substance of the complaint against the 1st interested Respondent and further, that the Disputes Committee did not have any power to make an award of 50% of the 1st interested Respondent's benefit set out above.

45 The affidavit of Mr Patrick Wong, the general manager of the Applicant, sworn on the 9th of August 2001, annexes to it statements from employees of the Applicant, which if true, support the Applicant's case.

An affidavit in reply on behalf of the respondents denies the matters alleged on behalf of the applicant. But the affidavits filed on behalf of the applicant namely that of Sada Siwan the manager of the applicant and Mr Patrick Wong satisfy me
50 that the applicant has at least established an arguable case and I therefore grant leave for it to apply for judicial review.

No submissions have been filed on behalf of the Respondents but Mr Sahadeo Singh an Acting Senior Labour Officer in the Industrial Relations Department swore an affidavit on the 12th of September 2001 on behalf of the Respondents.

5 In paragraph 27 Mr Singh states that the decision to award 50% benefit to Ms Labalaba was arrived at by consensus. Further it was made within the stipulated terms of reference of the Disputes Committee whose decision is deemed to be an award of the permanent arbitrator and is binding on the parties to the dispute by virtue of s 5(4) of the Trade Disputes Act (Cap 97).

10 I agree that unless there are reasons to the contrary that statement is true as a matter of law. However in my judgment there is a very strong reason for disallowing the decision of the Disputes Committee, namely that in awarding a 50% benefit to Ms Labalaba the committee went outside its terms of reference and that consequently its decision is a nullity.

15 Any administrative act or order which is ultra vires in the sense of being beyond the powers of the decision-maker to make is void in law, ie deprived of legal effect.

The committee was given power only to reinstate the 1st Respondent without loss of benefits. However it had no power to reinstate her to her former position and be paid 50% of her benefit from the 20th of October 2001 to the 8th
20 of April 2001. I therefore hold that the decision of the Disputes Committee must be set aside and quashed on the ground that it went beyond its terms of reference. I am also satisfied that the committee erred in not giving reasons for its decision.

25 Like most Puisne judges, perhaps a fortiori acting judges, I am naturally reticent in mentioning one of my own judgments to support my holding here that the committee should have given reasons. However, the Applicant cites my judgment in *State v Transport Control Board and Pacific Transport Ltd; Ex parte Mohammed Jalil Khan* HBJ0027 of 1994 in which I quoted from Professor Wade in his *Administrative Law*, 6th ed on p 547 where he said:

30 *A right to reasons is therefore an indispensable part of a sound system of judicial review. Natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice.*

Earlier in HBJ No 2 of 1991 *Sydney Wright v Minister for Immigration* I had said that increasingly the courts were holding that arbitration tribunals should
35 give reasons for their decisions where possible.

In the instant case I am satisfied that where a decision to dismiss an employee for an arguably serious breach of her employment conditions was overruled the Disputes Committee should have given at least brief reasons for disallowing the dismissal. Because it gave no reasons I also uphold this ground for
40 Judicial Review.

The order of the court therefore is that the decision of the Disputes Committee of the 9th of April 2001 is quashed. The Respondents must pay the Applicant's costs which I fix at \$750.

45 *Judicial review allowed.*