IN THE SUPREME COURT OF TONGA
CIVIL JURISDICTION
NUKU'ALOFA REGISTRY **CIVIL NO. 1315/98**

BETWEEN	:	GORDON KOLOA	:	***Plaintiff***
AND	:	1. SAIMONE P. HELU 2. TONGA WATER BOARD	:	***Defendants.***

BEFORE THE HON. JUSTICE FINNIGAN

COUNSEL : Mr Kengike for Plaintiff
: Mr 'Etika for Defendants

Date of Hearing : 9, 10, 11, 12 & 13 August 1999
Date of Judgment: 29 October, 1999

JUDGMENT OF FINNIGAN, J

The plaintiff claims against the defendants for acts that he says were wrongful because they were a breach of his contract of employment. In his statement of claim he claims that he was wrongfully suspended then dismissed from his employment with the second defendant. His claim is that he was dismissed on the ground of stealing the second defendant's property, and that this was wrongful because he was given no opportunity to offer a defence on his own behalf. He claims that this caused damage to his reputation and loss of employment and financial hardship from then on for the rest of his life.

For remedies, he claims three years' salary, T$23,310, plus T$10,000 for damage to his reputation.

THE FACTS

The major facts of the matter are not in dispute. From the evidence put before me, I find them as follows. The plaintiff had been self-employed. On I June 1995 he commenced employment with the second defendant in the position of Chief Production Officer. The appointment was "conditional on serving a

probation period of 6 months effective from the date of appointment", which is a standard commencement condition for the second defendant's employees. He carried out his duties from the second defendant's compound at Mataki'eua. On 27 June 1995 the first defendant wrote to all the employees at Mataki'eua, setting detailed standards of conduct, for which they had to accept the directions of the plaintiff. The same day the first defendant wrote to the plaintiff, telling of an allegation that he had (a) allowed persons to drink alcohol on the premises the previous Friday, and (b) lied to the first defendant about it. The letter was a warning and a request for an explanation. The plaintiff responded in writing, giving an explanation, acknowledging misconduct and accepting the warning. He promised no repetition.

On 3 July 1995 the first defendant again wrote to the plaintiff, advising that there was to be no private work done during his employment, in order to prevent any conflict of interest with the plaintiff's workshop. On 14 August 1995 the first defendant wrote to the Production Division at Mataki'eua, sending the memorandum to the Chief Engineer and to the plaintiff, and to the senior mechanic, who was the officer below the plaintiff. In the memorandum he complained that there was a serious water level and low pressure problem about which insufficient in his view was being done. He told the recipients that if there was no immediate improvement he would assume they were not capable of doing their duty.

On 24 August 1995, one of the employees at Mataki'eua, Kepu by name, wrote to the first defendant. He said that he was writing on behalf of all the employees there. There were 21 employees there altogether. The letter stated that the staff did not agree with the working procedure of their manager, the plaintiff, and that he was misusing his position in a dishonest manner. Five specific allegations were set out in numbered paragraphs.

In order to confine this case to its issues I do not set out the allegations. They were all allegations of improperly using the second defendant's fuel, stock, tools and employees for his own purposes.

The next day, 25 August 1995, the first defendant submitted the employee's letter to the chairman of the second defendant, along with his recommendations. These were (1) that the plaintiff be suspended with effect from the next working day, Monday 28 August, and (2) that the first defendant investigate the allegations and submit his findings to the Board for its final decision. The chairman approved the recommendations the same day, and, still on that day, the first defendant wrote to the plaintiff. His letter told the plaintiff to surrender his keys to the senior mechanic and leave the compound. Attached to it was a copy of the letter of complaint.

At about the same time, 28 August if my reading is correct, another letter was written to the first defendant from the Mataki'eua compound. It was signed by eleven of the 21 employees there. These 11 employees stated that the writer of the complaint letter did not have their consent to say that he wrote on behalf of them. They claimed that the writer of the complaint letter did not do any work, and had acted to upset them and had acted with malice and hatred for the plaintiff, who in their opinion was a very responsible honest and helpful person to the Board. It is relevant that in his June monthly report, dated 7 July, the plaintiff had reported to the first defendant that all employees at the compound had carried out their responsibilities in the month of June except two. He reported that those two workers had been alerted or warned by him, but that he had been ignored. One of the two workers named was the person Kepu who wrote the complaint letter.

Also on 28 August, the plaintiff wrote to the first defendant in response to the suspension. He made the first defendant aware of a list of his personal items which he was using in the service of the second defendant, and other items of the second defendant which he had taken to his home for repair.

On 30 August 1995, in response to the first defendant's inquiries, one of the employees at the compound, Vunga by name, wrote a letter to the first defendant. He stated that he personally had carried out four of the five actions alleged in the earlier letter by Kepu. He said he had done these things at the direction of the plaintiff. He said that he had reported these actions to the

senior mechanic, the foreman and the leading hand, Kepu. He said that he did so because he did not want to be accused of breach of trust in his work. It was the leading hand Kepu who had written the original complaint letter. A person who helps another to commit an offence is an accomplice. The writer of this letter was an accomplice.

This is not to say that the writer of the letter was guilty of any offence, but only that his letter claimed that he was involved in carrying out four of the actions of which he accused the plaintiff. In his letter, Vunga went on to make three other accusations against the plaintiff. One of these was the fifth allegation in Kepu's letter, the other two were new.

On that day 30 August 1995 the first defendant wrote again to the plaintiff, telling him that he was required to submit a written explanation of the five allegations within 14 days of 28 August. On 4 September 1995 the plaintiff wrote a lengthy letter, giving in detail his responses to the five allegations, each in turn.

On 13 September 1995 the first defendant wrote to the Acting Solicitor General, sending a copy of the appointing resolution and of the complaint letter. He stated that the subcommittee that had considered the matter had by that time recommended that the plaintiff be dismissed. He sought advice on the appropriate action to take and wording to use. There was no reply by 15 September 1995, when the second defendant met as a Board and considered the recommendation of the subcommittee. The Board decided to dismiss the plaintiff and to pay his salary until the date of his dismissal, 15 September.

The Minutes of the Board Meeting of the second defendant on 15 September 1995 were subsequently confirmed and signed by the chairman at the meeting of 20 October 1995. They show that the topic of the plaintiff's employment was discussed. The minute is as follows:

"The Sub-committee informed the Board that Mr Kotoni Koloa, Chief Production Officer had been suspended as from 28th August 1995, because of allegations against him. Even though that he was still on probation his conduct and service was unsatisfactory such as the continuous low water level at Mataki'eua. Thus, to terminate the service of this officer.

In reply to the question from the Acting-Chairman whether there was any understanding with the legal advisor on that matter, the Secretary stated that the Acting Legal Advisor has been advised.

Member S. Taumoepeau also pointed out that to ignore the allegations against this officer from the other officers at Mataki'eua but to terminate his service on the basis that his performance was unsatisfactory while he was still on probation.

The Board approved the sub-committee resolutions...."

The plaintiff was advised by letter on 18 September 1995.

The plaintiff immediately sought legal advice and on 27 September his lawyer wrote challenging the dismissal, both as to its procedure and as to its grounds. He asked the second defendant to review its decision. On 11 October the first defendant wrote again to the Solicitor General, informing of the dismissal, passing on the lawyer's letter and seeking advice. On 7 November he wrote again to the Solicitor General, stating that he was going to submit the lawyer's request for a review to the second defendant the following week and seeking advice urgently. On 8 November the Solicitor General replied, reviewing the steps taken, and noting that there had been allegations made, an explanation offered, and refutation of that explanation by other employees and by the first defendant himself which showed that "Mr Koloa's versions were not true". The letter went on: "Mr Koloa's employment was then terminated by the Board as he was still on probation." The Solicitor General's legal opinion was that the procedures taken appeared to be in order. The Solicitor General suggested nonetheless that the lawyer's letter with all the relevant documents be referred to the Board so that it could reappraise the situation. He said that if the Board decided to uphold its previous decision, he would be happy to reply to the lawyer's letter if asked to do so.

On 17 November 1995 the second defendant considered again its decision to dismiss, and decided to uphold the dismissal decision.

Later the plaintiff was prosecuted for theft of items belonging to the second defendant, but the case came to nothing when the complainant party did not appear at the hearing.

There was much else besides in the evidence. What I have stated above, as my findings of fact, are my findings from the evidence relevant to the plaintiff's claim. There is much else also in the statement of claim. However, in the present case there has been no evidence at all to support a discussion of the relevance, or a decision, of these other claims.

DECISION

In his statement of claim, the plaintiff claims that he had a contract of employment. The defendants do not deny this. Next, he claims that he was wrongfully dismissed, i.e. dismissed in breach of his contract. The defendants deny this. What was the term of his contract that the plaintiff says was broken? He does not specify the term in his statement of claim, but at paragraph 18 he lists the 7 things that he says the employer did that he claims were breaches of his contract. Among these, he claims that he was suspended before being asked for any explanation. He claims that the defendants failed to examine the grounds of his dismissal and his explanation. He claims that they failed to recognise the clear fact that there was no merit in the grounds, and that they failed subsequently to obtain a further explanation from him.

In summary, what occurred was this. The plaintiff was appointed, "conditional on serving a probation period of 6 months". About four weeks after he started, he was warned about his behaviour, and a little later was told to be sure not to mix his private work with that of the Board. After about six weeks he was one of the recipients of a memorandum from the General Manager about the low level and low pressure. Ten days after that a letter was written, purportedly on behalf of all the 21 employees whom he supervised, making specific allegations of dishonesty against him. He was suspended so that the allegations could be

investigated. Simultaneously 11 of the 21 employees wrote that the letter of complaint was malicious and incorrect in claiming it had their authority. The 11 claimed that the writer of that letter was wrong and acting from wrong motives. The defendants knew that the writer had been the subject of a bad work report by the plaintiff the previous month. The general manager spoke to some of the employees, and from among the employees to whom he spoke, one wrote him a letter. This employee said that he personally had been involved in four of the five allegations of dishonesty. He joined the original letter-writer in accusing the plaintiff of the fifth allegation and he added two more. At about the same time, the plaintiff wrote a detailed explanation for each of the first five allegations.

This was the material that the subcommittee had available to it for consideration. There is no evidence whether the letter from the 11 employees was given to the subcommittee. There is no evidence whether it was ever considered. It may have been. The recommendation of the subcommittee itself was the last stage before the employer's decision. To a large degree the subcommittee had itself relied on the general manager.

This in my view was in order, but it was for the second defendant to make the decision and take responsibility for it. It is clear that the second defendant knew this, because it sought legal advice before making the decision and later its acting chairman raised the question of legal advice while the decision was being discussed at the Board meeting.

It is necessary, as the acting chairman recognised, to call to mind the law that governs this contract.

The written terms of the contract are simple and few. They are in the initial advertisement, the appointment letter and the job description or schedule of duties (document D3). There is no written term governing suspension and/or dismissal. The breaches claimed are breaches of terms that the plaintiff says have to be implied. About that proposition there are authorities, and in the time I have taken to find them I have selected a few only for mention. *Ridge v*

Baldwin [1963] 2 All ER (HL) 66 is perhaps a starting point for present purposes. That was a case of dismissal from an office in circumstances [what Lord Reid in his judgment categorised as a third class] where there had to be something against an employee to warrant dismissal. In that case there was a statutory power to dismiss, and the court held that in exercising the power the employer must act fairly. The House of Lords decided that, in the facts of that case, the rules of natural justice were imported into the employment contract. Lord Reid said (at p 71G) that in the law of master and servant, [the first of the three categories of dismissal case] no reason need be given, but if a master terminates the contract of employment in a manner not warranted by the contract, then he must pay damages for breach of contract.

To get to that point in the present case, the plaintiff must show that there was a term implied in his contract that was broken by the employer. The principles of natural justice do not help him. In *McClory v Post Office* [1993] 1 All ER (Ch D) 457 the Court held with ample authority that the rules of natural justice cannot be imported into the purely contractual relationship of employer and employee merely because the Court thinks it is reasonable to do so. The parties are free to create their own terms.

I shall pause now to deal with the plaintiff's claim about his suspension.

In *McClory's* case there was a written contract, and it contained a clause that permitted the employer to suspend for cause. The employer had an express contractual right to suspend. The court was asked to imply a term that the employer's contractual right had to be exercised fairly. The Court declined to do that. A term can be implied, but only when that is necessary to give full expression to the bargain made by the parties, or if it is so obviously intended that it was not expressed; i.e. only if it is clear that this is what the parties intended when they made their contract. That term, if imported, cannot normally be a term imposing fairness, but it can be a term that provides for reasonable behaviour.

In the present case, the employee was informed of the allegations against him, his explanation was sought, and he was suspended so that the employer could conduct an investigation, of which his explanation was to be a part. That surely was reasonable. It was not prohibited by any term that may be implied. It was not prolonged beyond the time needed for the employer's consideration of the matter. Though his salary was suspended it was paid in full at the end of the period. That disposes of the plaintiff's claim that his suspension was in breach of his contract. On its facts alone it was not. That part of his claim must fail.

In the case before me, there was no express right to dismiss for cause. Can one be implied? Of course. Not even the plaintiff denies the employer had a right to dismiss for cause, and it must be accepted that the employer had that right, and was intending to exercise it. The next step is, does the contract have a term that the employer's right will be exercised in any particular way?

In *McClory's* case, the Court held that the right to suspend had with it an implied obligation to act reasonably. Specifically, it implied a term that the employer could exercise its right to suspend only on reasonable grounds, and could continue a suspension only so long as there were reasonable grounds for doing so. It held that to imply this term is not to substitute the Court's judgment for the employer's, and falls short of importing into the contract an obligation to act in accordance with natural justice. In my view, the same principle applies where there is a contractual right to dismiss.

The reasoning in *McClory's* case alone is enough to support that conclusion. Apart from that however, there is a principle at law that in a contract of employment the parties must conduct themselves in a way that is not likely to destroy or seriously damage their relationship. This principle is illustrated in a 1997 case about repudiatory breach in an employment contract, *Malik v Bank of Credit and Commerce International SA (in liquidation)* [1997] 3 All ER 1. At p 5f and following Lord Nicholls made the following observation:

....[the bank in that case] was under an implied obligation to its employees not to conduct a dishonest or corrupt business. This implied obligation is no more than one particular aspect of the portmanteau, general obligation not to engage in conduct likely to undermine the trust and confidence required if the employment relationship is to continue in the manner the employment contract implicitly envisages....

The trust and confidence required in the employment relationship can be undermined by an employer, or indeed an employee, in many different ways. I can see no justification for the law giving the employee a remedy if the unjustified trust-destroying conduct occurs in some ways but refusing a remedy if it occurs in others. The conduct must, of course, impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer.....

Further, he commented (at p 5h and j and p 6a):

[To contravene this principle, the employer's] conduct must, of course, impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer.....

A breach occurs when the proscribed conduct takes place.....

Proof of a subjective loss of confidence in the employer is not an essential element of the [employer's] breach....

That is the principle that governs the present case. There is implied into the employment contract of these parties a term that the employer would not conduct itself in a way that, when objectively viewed, was likely to destroy or seriously damage the degree of trust and confidence that the plaintiff was reasonably entitled to have in his employer.

I hold that the employer was bound by an implied term of the contract to act reasonably when it exercised its right to dismiss the plaintiff. I hold that it was

bound further not to conduct itself in a way that, objectively viewed, was likely to destroy or seriously damage the degree of trust that the plaintiff was entitled to have in the second defendant as his employer.

The onus lies in the present case on the plaintiff to show that the employer did not act reasonably and on reasonable grounds when it dismissed him.

The plaintiff was suspended and given the first letter of two letters of allegation against him. He was given a period of 14 days in which to consider and write a carefully worded reply to the first of them, which was the only complaint that the employer had at that time. That was reasonable. There is no objection at law to a procedure that provides the employee with the known details of a complaint against him and an opportunity to explain or answer in writing. In almost all circumstances a written explanation can be readily described as a reasonable procedure, because the employee has complete freedom to gather information if he needs to, and consider carefully what he will say, knowing that what he says will be taken into account.

However, the opportunity to respond must be to respond to what the employer has before him. Sometimes after the initial allegation, the employer receives other information that attacks the employee. If it intends to rely on that information, then it must give that information also to the employee for his response. If it receives information that favours the employee but intends not to rely on it, then that information must be shown to the employee for his response. It must then take the further responses into account. Not everything gathered by the employer needs be put to the employee, but it is usually clear in the circumstances whether material needs to be shown to the employee with a reasonable opportunity of response.

In the present case, after the employer passed on the initial letter to the plaintiff, it received two further letters. One was a letter signed by more than half the employees denying the allegations made by the first employee. On the evidence, it seems to have been ignored. The second was a letter from a person who claimed to have been involved in four of the alleged instances of

dishonesty. This second letter clearly contained material information, and was more detailed than the allegations given to the plaintiff for response. It should have been given to the plaintiff. The defendants put it before the Court as material allegations, tending to show that the plaintiff had committed the misdemeanors of which the original letter had accused him. But it was not shown to the plaintiff for his response. This letter was a detailed accusation from a man who admitted being involved in some of the dishonest deeds that were alleged, and who claimed to have been acting under directions from the plaintiff. The plaintiff's response was needed before the employer could reasonably assess its worth, and decide what weight to give that letter. This failure alone is ground for a finding that the subcommittee did not do a reasonable investigation of the allegations.

I turn now to the Board's deliberations on the subcommittee's report. The minute of the Board's meeting is set out above. The minute records that the Board decided to dismiss the plaintiff because he was still on probation and his conduct and service had not been satisfactory, as evidenced by the continuous low water level. It records that the Board felt that it should not ignore the allegations against the plaintiff because his performance was unsatisfactory while he was still on probation.

He was not dismissed for dishonesty at all. He was dismissed for unsatisfactory conduct and service while on probation. This unsatisfactory conduct was not specified, and the seven allegations of dishonesty supposedly investigated by the subcommittee were not referred to in the minute. The conduct was said to include the continuous low water levels. The general manager's memorandum about that had been sent to the chief engineer as first recipient, and it did not tell the plaintiff that low water levels were considered a cause for dismissing him without further warning. The second defendant diverted itself onto other matters upon which the plaintiff had had no opportunity to comment. In the minute, and in the evidence of the first defendant, there is no record of any consideration of the allegations of dishonesty. It seems to me from reading the minute that the low water level was added, to make the reasoning of the employer stronger. None of these

things had been put to the plaintiff as reasons for dismissing him. He was never made aware that the employer considered he was liable to be dismissed for those reasons.

As well, he was accused of falling below a standard he had not met as a probationer. He was not made aware of this, or given the opportunity to comment. The term is said to be universally in use by the second defendant, even the first defendant was on probation when he started. But what does this term mean? It certainly cannot at law mean that the employee is easier to dismiss. There is no lower standard governing the treatment of employees who are on probation. The same implied standards of reasonableness govern the employment contract, whether the employee is on probation or not.

The meaning of the term "conditional on serving a probation period of 6 months effective from the date of appointment" was used in the plaintiff's appointment. What does it mean? It must mean that the continuation of the employment *after 6 months* was conditional on the appointee's proving himself. His work was to be watched for 6 months to see whether he was fit for the job. The Concise Oxford Dictionary defines "probation" in this setting as "testing of the conduct or character of a person for employment". There is nothing in any of this to say that if the plaintiff is found unsatisfactory then the fact that he is on probation can be added to that, to make a reason for dismissing him before the end of the probationary period. Putting an employee on probation imposes obligations on the employer as well as the employee. It is, after all, the employer who imposes the probationary term, and decides the period. It is a period during which the employee has to prove himself. The period should run, in fairness to both parties. If a serious reason arises that by itself justifies the dismissal of the employee, then the probationary employee may be dismissed during the probationary period for that reason. However, if the service is unsatisfactory, it is the employer's contractual duty to act reasonably in exercising its rights. It should first warn the employee about that unsatisfactory service, and continue the probationary period. If no particular serious cause for dismissal arises, the employer generally is unjustified in dismissing a probationary employee for unsatisfactory service until the

probationary period has proved that the employee is unsuitable. If the probationer is dismissed at the end of the probationary period for unsatisfactory performance, even then the employer has to be ready to show that that decision was a reasonable one in the circumstances. It cannot be reasonable unless the employee has fallen below an acceptable standard, and has had the opportunity to respond to warnings or else to state his reasons why he should not be dismissed.

What I have said applies to probationary employment where a term is *implied* that requires the employer to act reasonably in exercising its rights. If the rights of the employer in respect of probationary employment are *set out* in the express terms of the contract, then those terms govern the employer's conduct. In the present case the employer's rights are governed by implied terms for reasonable and trust-worthy conduct.

The employer made no record, and presented no evidence, that it decided that the five allegations that were shown to the plaintiff were sufficiently serious by themselves to warrant dismissal with no other reason added.

If it had dismissed the plaintiff for only those five allegations of dishonesty as set out in the initial letter from Kepu, it may not have acted unreasonably because it had considered the plaintiff's explanations. However, it had more detailed accusations from the other employee. It did not give the plaintiff the opportunity to respond to those. It did not tell him that the accomplice had added two new allegations. In addition it considered other reasons, which the plaintiff did not have an opportunity to respond to, either by showing that his work was of a reasonable standard or by working harder in the remainder of the probation period. It dismissed him for those other reasons. Those reasons were premature, and were decided without any opportunity for the plaintiff to put his case. This was not reasonable conduct, nor was it trust-worthy conduct.

Thus it follows, and I hold, that the employer was in breach of an implied term of the contract to act reasonably when it exercised its right to dismiss the

plaintiff. I hold that it was in breach further of an implied term that it would not conduct itself in a way that, objectively viewed, was likely to destroy or seriously damage the degree of trust that the plaintiff was entitled to have in the second defendant as his employer.

CONCLUSIONS ON LIABILITY

Thus I hold that the dismissal was a breach of implied terms in the plaintiff's employment contract as he has claimed. These terms were (i) that the second defendant would exercise its dismissal rights in a reasonable manner, and (ii) that each party would not act in away that undermined the trust of the other party.

I hold however that the decision to suspend the plaintiff from 28 August 1995 was a reasonable action. I dismiss the plaintiff's claim that the suspension was wrongful.

CONCLUSIONS ON DAMAGES

I turn now to the issue of damages. Here I must pause again to consider principles. I am more familiar with the authorities in the New Zealand courts, but the common law principles are the same as in England and in Tonga. One case is sufficient for our purposes, though it produced several judgments. This is *Turner v Ogilvy & Mather (NZ) Ltd*, an action for breach of contract and wrongful dismissal at common law. In this case, which pre-dated *Malik's* case, both the Employment Court and the Court of Appeal upheld the two implied terms that I have found above. Both courts then considered the issue of damages.

The principles were reinforced by the Court of Appeal in both of its judgments in *Ogilvy & Mather (NZ) Ltd v Turner*, first in 1993 and again in *Ogilvy & Mather (NZ) Ltd v Turner* [1996] 1 NZLR 641. This is that damages are recoverable on the basis of breach of an implied term, but are recoverable primarily to compensate for the breaches of the contract. Next, for wrongful dismissal in breach of contract there are settled principles for calculating damages assessed

on the plaintiff's proved financial loss, and damages are available for distress and humiliation that arises from the manner of the dismissal.

I am satisfied by the evidence that the plaintiff in the circumstances of this case was dismissed in breach of his contract and that his reputation has suffered as a result of his dismissal. I am satisfied by his evidence and that of his wife and other witnesses that the damage to his reputation is by itself integral with a sense of humiliation and distress. I accept that claim as a claim for humiliation and distress. I find as a fact that the plaintiff is qualified for and capable of self-employment, and that for normal purposes in that employment he relies on his reputation. I note his evidence about his loss of self-esteem and about his difficulties in re-establishing his workshop business. However, it seems to me that the continuation of the employment for an indefinite period was not a foregone conclusion. For the lost employment I would hold on the facts of the case that three months' net salary and cost of living allowance at most should be awarded in damages. In any event I note and adopt a statement of principle by McKay J in the earlier reported *Turner* judgment, [1994] 1 NZLR 641, at 655. Referring to the statutory remedy of a minimum of three months' remuneration for unjustifiable dismissal, he said:

> For many workers, the minimum payment of 3 months' remuneration under s 41 [of the (NZ) Employment Contracts Act 1991] in cases to which it applies, such as unjustifiable dismissal, will represent *more than* they would be able to obtain at common law. (Emphasis added)

I award as damages for loss of income a sum roughly equivalent to the net amount of salary that he would have received in the three months following the dismissal had the dismissal not occurred. This sum is awarded as damages and is not salary. From the evidence that I have, I calculate a round sum of $1,750. That is the amount of the damages award for loss of income.

His humiliation and distress and the damage to his reputation was not catastrophic and will not be permanent. I take that into account. However, I am satisfied that as a consequence of the wrongful dismissal the idea

circulated that the plaintiff was dismissed for dishonesty. That ground was not properly established in a reasonable and fairly conducted enquiry as a cause for the dismissal, nor relied on as a sufficient cause by the second defendant. For his humiliation and distress and the injury to his reputation, as I assess them from the evidence given by himself and his witnesses, in the whole of the circumstances, I assess an amount of $4,750.

The award in damages totals $6,500. This is not a liability of the first defendant personally, and is to be paid by the second defendant.

Costs should follow the event in this case, and are awarded to the plaintiff, to be agreed or taxed.

NUKU'ALOFA: 29 October, 1999

SUPREME COURT TONGA

JUDGE