

IN THE EMPLOYMENT

TRIBUNAL AT SUVA

ERT Grievance No. 20 of 2010

BETWEEN : ROKO TAGI ALBERT  
WORKER

AND : FA & COMPANY  
EMPLOYER

*Appearances:*

*Ms. S. Rigsby for the Worker*

*Mr. S. Fa for the Employer*

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DETERMINATION OF THE TRIBUNAL

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**The Employment Relations Problem**

- 1] The claim by Roko Tagi Albert of unfair termination on 19<sup>th</sup> November 2009 by Fa & Company.
- 2] In this proceeding:
  - Roko Tagi Albert shall be referred to as ("RTA")
  - Thomas Wong Junior shall be referred to as ("TWJ")

**Background and Evidence**

- 3] TWJ gave evidence that he started working with the employer from 2002 to date and that he is familiar with all the workers including RTA when she was employed as a receptionist with the company from 2007 to 2009. As a receptionist her work was to look after the reception and liaise with clients coming to the office.
- 4] TWJ told the Tribunal that RTA performed well when she started in 2007 whist from 2008 she performed well below her best. She was missing work and often reported late for work, well after 8.00 am and sometimes close to 9.00 am. He added that RTA also started taking extra time off during lunch breaks.
- 5] TWJ stated that he was involved in looking after the staff from 2002 till 2010 and monitoring their performances. He said that RTB would tamper with the records when clocking in late and that he had witnessed her doing that sometime in February 2009. That behavior continued and on 3<sup>rd</sup> August 2009 she

was given a warning letter. On 19<sup>th</sup> November 2009 she was terminated and given her letter on the same day.

6] Under cross examination TWJ confirmed that whilst RTA was employed as a receptionist, she was required to do a lot of typing and was given an increment in January 2009 and was employee of the month in May 2009 although she was found tampering with the records in February of the same year.

7] On re-examination TWJ reiterated that RTA was incompetent as a typist; she was too slow.

8] In her evidence, RTA told the Tribunal that Mrs. Fa called her to work in the husband's office and she started working there as a receptionist sometimes in April 2007. RTA added that her work included receiving and making calls, updating of diaries and recording of staff movement and she added that she hardly did any typing.

9] As to the employment contract, RTA confirmed that she was given an "offer letter" which she did not sign and a second letter about "contract and agreement for the job" which she also did not sign.

10] On the termination of her employment, RTA explained that Mr. Isireli Fa called and advised her on 18<sup>th</sup> November 2009 that he was letting her go as the law firm was going into a new direction and that she was going to get her one month's pay plus her Christmas money.<sup>1</sup> RTA further submitted that Mr. Isireli Fa told her that 13<sup>th</sup> December 2009 would be her last day at work and there was no need for her to come to work the next day but it was solely up to her. There was no termination letter given to her during termination and that the letter dated 30<sup>th</sup> December 2009 was delivered to her home where her husband received it.

11] Under cross examination, RTA specified that she worked for about 2 years and 6 months and that she received but did not sign the contract. As for her termination she stressed that she was performing well when she was terminated on 19<sup>th</sup> November 2009.

12] The parties made oral closing submissions as follows:

i] For RTA, her counsel submitted that Mr. Isireli Fa never at any time during the conversation with her stated that the reason for letting her go was that of being absent from work, or of coming late to work, or inability to type as stated in the termination letter and that RTA completely disagreed with the reasons set by Mr. Isireli Fa.

<sup>1</sup> There was no description of this month's pay and Christmas money; whether the month's pay was in lieu of notice or outstanding leave and of course the Christmas money whether it is a kind of bonus.

ii] Counsel for RTA then started referring to the Employment Ordinance which had been replaced by the Employment Act Cap. 92 which was repealed by the Employment Relations Promulgation 2007 (ERP). The Tribunal pointed that out to the parties as both counsels were making references to a law that has long been repealed. In anyway, for the purpose of this decision the Tribunal looked at and considered the principles of law advanced by both sides.

iii] Counsel for RTA submitted that her client was employed on an oral contract as counsel for the employer had alleged that RTA did not sign a contract with the employer and as such she was not a contracted worker. To support her position counsel for RTA referred to the increment paid out in January 2009 to RTA and her award for being the employee of the month in May of the same year as evidence of being a contracted employee of this law firm.

iv] Counsel for RTA then referred to the breach by the employer in not paying to RTA all wages and benefits due to the worker at the time of termination.

v] Counsel for the employer made submissions on the following 2 issues:

- Was the employer entitled to summarily dismiss RTA?
- What were RTA entitlements?

vi] On the first issue, counsel for the employer referred to the grounds of summary dismissal being misconduct for tampering with the time cards and continual or habitual absence from work without the permission of the employer and without other reasonable excuse, and in that regard was entitled to summarily dismiss RTA.

vii] On RTA entitlements, counsel for the employer referred to the claim by RTA that she should be paid all her wages and benefits then due during termination and responded that the employer is not going to pay any other entitlement other than what RTA had earned up to the day of her dismissal. Counsel for the employer alleged that RTA has defrauded the company and to pay her anything more would not be fair.

**Analysis and Conclusion**

13] Counsels for the parties were arguing on sections 23, 30 and 33 of the ERP and were using the provisions in the repealed laws. In the ERP section 23 deals with contract for service to be oral or written section 30 deals with payment of wages and other benefits during termination and section 33 deals with summary dismissal.

14] From the evidence RTA did not sign the employment contract and in that connection she was engaged on an oral contract as she actually worked for the employer for about 2 years and 6 months.

15] From the evidence RTA was not paid all her outstanding wages and benefits due during termination and the employer has taken a very strong position in this one. There was no evidence of what was actually due like annual and sick leave apart from outstanding wages. This is without taking into account the promise made by Mr. Isireli Fa direct to RTA on one month's pay and Christmas money.

16] Section 33 deals with summary dismissal and the Tribunal agrees with the action taken by the employer in this instance but disagrees in the way termination was conducted as in Central Manufacturing v Kant [2003] FJSC5, the Supreme Court held, that

*..there is an implied term in the modern contract of employment that requires an employer to deal fairly with an employee, even in the context of dismissal..*

17] Specifically, the Supreme Court held that while the common law implication,

*...plainly does not extend to a requirement that reasons be given, or that a hearing be afforded at least where the employee has the right to dismiss without cause and to make a payment in lieu of notice. It does extend, however, to treating the employee fairly, and with appropriate respect and dignity, in carrying out the dismissal.*

18] In this case there was no dismissal letter at the time of dismissal yet in evidence TWJ for the employer testified that the termination letter was given to her on 19<sup>th</sup> November 2009. That could not be as the employer wrote to RTA on 30<sup>th</sup> December 2009 confirming the termination effective from 19<sup>th</sup> November 2009. This piece of evidence plus the promises made to RTA by Mr. Isireli Fa are fatal to the employer's case on the unfairness of the dismissal and to top it all, the dismissal letter was delivered to her home and collected by the husband.

19] RTA genuinely and rightly felt that she was pushed into termination and the employer can plead termination with cause but the way it was carried out hurt the respect and dignity of RTA. Who knows, there could be a trophy or a certificate in her house in Delainavesi for being the employee of the month in May 2009 but terminated 6 months down the line.

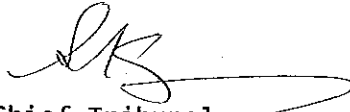
**Determination**

20] The Tribunal determines that RTA has a grievance of unfair dismissal and in that regard awards the following remedy.

**Remedy**

21] In accordance with section 230(1) (c)(i) Orders the payment of 3 months' wages to the worker as compensation by the employer for humiliation, loss of dignity and injury to the feelings of the worker. This compensation is in addition to the wages and other benefits due to the worker at the time of dismissal.

DATED at Suva this 11<sup>th</sup> day of May 2012

  
Chief Tribunal