



Ex Tempore Decision

Title of Matter: Maznu Khandokar (Grievor)
v
Sitar Indian & Thai Restaurant (Fiji) Proprietary Ltd (Employer)
Section 211 (1) Employment Relations Act 2007

Subject: Adjudication of Employment Grievance

Matter Number: ERT Grievance 75 of 2013

Appearances: Ms R Varasikete of Messrs Babu Singh & Associates, for the Employer.
Grievor appearing in person

Date of Hearing: 19 September 2017

Before: Mr Andrew J See, Resident Magistrate

Date of Decision: 19 September 2017

Background

The Grievor, Mr. Maznu Khandokar is a former Bangladeshi national who was employed by Sitar Indian & Thai Restaurant (Fiji) Proprietary Ltd between August 2009 and his dismissal date some time on or before 15 November 2012. The Tribunal heard that Mr Khandokar was encouraged to work in Fiji by the Managing Director of the Respondent Nazrul Islam who offered the Grievor a remuneration package of \$15,00.00 per annum to be employed at the restaurant owned by the company. The employee has given evidence before the Tribunal that he was required to work 7 days a week approximately 16 or 17 hours a day and that during the course of his 3 year employment period with the Employer, was not provided with the compensation set out within the offer letter dated 27 August 2009.

Was the Grievor Justifiably Dismissed ?

Mr Khandokar has told the Tribunal that there were no time and wages records kept by the Employer and ultimately he had been dismissed from his employment reportedly for allegations of employee theft. That issue appears to have been subject of the Criminal Case No 330 of 2013, heard in the Western Division Magistrate's Court at Nadi in which the Honourable Resident Magistrate Dias determined that there was no case to answer in relation to charges of theft contrary to Section 291 (1) of the then *Crimes Decree* No 44 of 2009.

The Tribunal has had regard to the Preliminary Submission filed by the Employer on 7 August 2013 as well as the Statement of Defence filed on the 25 October 2016 and the Employer's Submission filed on the 25 of April 2017.

Counsel for the Employer at the commencement of the proceeding has indicated that the Employer and its witnesses were unable to attend the proceedings today and on that basis had sought an adjournment of the matter. Given that this matter had been set down for hearing on the 21 August 2017 and the fact that the grievance was initially lodged on 15 November 2012, the Tribunal is of the view that the Employer had been given ample opportunity to prepare and attend proceedings.¹ (To be advised of this state of play on the day of trial, is completely unacceptable).

On that basis and in accordance with Section 233 of the *Employment Relations Act* 2007, in the interests of justice and in a manner consistent with the purpose of the Employment Relations law, the Tribunal has deemed it necessary to evaluate the merits of the case, having regard to all the Submissions of the Employer and that which is available as evidence provided by the Grievor.²

Compensation Determined: To Equate to Failure of Employer to Meet Employment Arrangements Set out in Contract

The Tribunal is of the view that there is no justification in the dismissal and that the Employer has not met its obligation to pay the Grievor the amount of \$15,000.00 per annum. Although having said that, it would appear that the Employer did provide the Grievor with basic accommodation and food and on that basis the Tribunal is of the view that there should be an offset in relation to any monies claimed by the Grievor to recognize the provision of that benefit to the employee. Based on the figures that the Grievor has provided, it would appear that in total he received the amount of \$12,051.00 over the 3 year period.

The Tribunal has considered the standard of accommodation that had been provided to the Grievor during the relevant period. The Grievor advised that he was living in one bedroom with 5 other persons. To that extent, the accommodation could hardly be regarded as appropriate under the circumstances, particularly for an employee from overseas country who had been enticed by the Respondent to work in a foreign country. In any event, the Tribunal will price the accommodation for

¹ There is no explanation that was given that some witnesses could not attend, only that the Director could not attend.

² In effect, there would seem to be two issues before the Tribunal. Firstly that the worker was dismissed for reasons that could not be justified and with a claim for outstanding wages for that time period.

the relevant period at \$50.00 per week creating a nominal payment to the worker of a further \$7800.00. Based on those calculations, it would appear that the Grievor has a valid claim of \$25,149.00.³

The Tribunal is satisfied that this is the amount due and payable to the Grievor⁴, particularly in the circumstances where the Grievor says his employment prospects have now been 'killed' by the Employer, for what he says amounted to false allegations of employee theft.⁵ It is worthwhile noting in that regard that since the Grievor was terminated in his employment back in 2012, he has not been able to work in the country.

Conclusions

For those reasons the Tribunal makes the Order that the Employer Sitar Indian & Thai Restaurant (Fiji) Proprietary Ltd pay the Grievor Mr Maznu Khandokar the sum of \$25, 149.00. That sum to be paid within 21 days hereof.

A handwritten signature in black ink is written over a blue circular official stamp. The stamp contains the text "EMPLOYMENT RELATION TRIBUNAL" around the perimeter and "OFFICIAL" in the center, with a small star at the bottom.

Mr Andrew J See
Resident Magistrate

³ This compensation only in effect, would meet the contractual obligations up and until the date of termination. It really does no more than that and has not sought to provide the Grievor with some form of compensation for loss incurred because of the nature of the dismissal, nor to take into account any other factors that potentially could have been prosecuted had the evidentiary issues been fully explored. In the circumstances of this case, that would appear to be the fairer way of dealing with the matter.

⁴ That is, given that the grievance has been in effect determined on the papers and as supplemented by the opportunity for the parties to make any other submissions. Magistrate Dias makes it quite clear that in relation to employee theft, the Grievor had no case to answer. If that was the grounds for dismissal, there is no apparent justification for this action.

⁵ Had the matter gone to full trial, it is highly likely that the Tribunal would have awarded compensation for loss of wages arising for dismissal. No such award is made given the circumstances of this hearing.