IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION
ACTION NO. HBJ 013 OF 2002

No. 209/2006

IN THE MATTER of the Sugar Industry Act.

AND IN THE MATTER of Dispute No 1 of 2001 between The Fiji Sugar Corporation Limited and the Fiji Sugar and General Workers Union.

AND IN THE MATTER of an Appeal against a decision of the Sugar Industry Tribunal made under Section 105(1) (b) of the abovementioned Act on a question as to the meaning of certain words in a certain Memorandum of Agreement dated 19 December 2000.

BETWEEN: **THE FIJI SUGAR CORPORATION LIMITED**

Appellant

AND: **THE FIJI SUGAR AND GENERAL WORKERS UNION**

Respondent

Munro Leys for the Applicant
Sherani & Co the Respondent

Date of Hearing: 24 July 2006
Date of Judgment: 20 October 2006

JUDGMENT OF FINNIGAN J

[1] This is an appeal against part of a decision of the Sugar Tribunal dated 28 June 2002. In that decision two disputes were decided and an appeal against the second of these has been withdrawn. The appeal is against the following findings;

(page 5) "The Tribunal is of the view that [clause 8 (1) of the Manufacturing Industry Order 1993] ..... does prescribe a day of rest.

.....

In the absence of any definition of a rest day/rosted day-of as such, the Tribunal is of the view that the day of rest referred in clause 8(1) of the M.I.O. should be given the same meaning as a day in the Employment Act and therefore concludes that a rest day should embrace the hours from "midnight to midnight".

[2] I had the benefit of written submissions filed on behalf of both the Appellant Employer and the Respondent Union. I have perused these repeatedly and am familiar with the arguments. On the Appellant's part in particular these have been extremely detailed and fully supported by argument, particularly legislative argument.

Those of the respondent are quite brief. It is all a matter of interpretation of the parties' Collective Agreement, which originally they made in August 1962 and subsequently amended.

[3] The agreement has stood the test of time. This factor is important in deciding how to interpret the provision now in dispute. This new clause was written into the collective agreement in a **Memorandum of Understanding**, which the parties signed on 19 December 2000 (M.O.U).

[4] In summary the agreement was (in addition to the other agreements) that from and including the 2004 crushing season, working hours for shift workers would be adjusted and reduced so that in any fortnight one week would continue to be 48 hours as before and the next week would be 40 hours, without any consequent reduction in take-home pay. Before this, all shift workers worked a 48 hour week of 6 shifts. After this they worked one shift less, and so in every alternate week they worked 5 shifts.

[5] From this change arose a dispute about the day of rest that was rostered for any worker as the period before the change to a new shift. Until the dispute the period rostered was, I am informed, a 32-hour period and this was accepted by all parties as a day of rest because it was longer than the 24-hours which at that time all parties accepted was the normal minimum length of a rest day.

[6] The employer in essence argues that nothing has changed. The Union argues that with the changed circumstance the 24-hour rest day must include a fixed calendar day, midnight to midnight. Any further hours of rest added to that by rostering are in essence a bonus. This is not to be criticized. As a concept it is not at all

unreasonable. The context also is that the employer already is agreeable to continue paying previous wages for the second week even though the worker works one shift less.

[7] However, what have they agreed ? In my opinion one needs only to state that issue and one sees that what the Union contends is a strained interpretation of their agreement, desirable though that might be. Only if the interpretation supports it is that the workers' entitlement.

[8] What the interpretation is has to be determined by reference to rules of interpretation which begin with "the commonsense rule". Words are to be given their ordinary and natural meanings if that can be done and if the result makes commonsense. In order to find the commonsense of the words one has to look to their context. "Words of a feather flock together". The context in this is generally the verbal context – what else is being said?

[9] Inescapable also is any history, any prior agreed actions between the parties, putting aside present arguments and looking at what they may have done in the past. These parties have till now (I am informed) accepted any 32-hour period as satisfying their agreement for a full day of rest. Fundamental to that agreement was that it was enough, because it included a 24-hour period.

[10] The Union's position in the present dispute is that the law defines "a day of rest" as the particular 24 hour period of midnight to midnight (the Employment Act). What the Collective Agreement provides, elsewhere at Clause B7 "Note", is that a day of rest (for the purpose of paying overtime) is the 24-hours before a shift worker resumes work on a change of shift.

[11] One must be careful at the outset. Two differing interpretations of the same words in the same collective agreement can scarcely be encouraged. It should happen only if shown to be deliberately intended.

[12] The Tribunal agreed with the Union. In doing so it was admirably brief, avoiding the long path through the many provisions in the collective agreement and in related legislation which it might have considered. It did consider some of them, and competently, because these are part of the context. However I accept the submission of the employer that it made two errors.

[13] The first (perhaps less important) was to base its interpretation on a former version of "R.8(1) of the MIO" [above]. The 1993 version had been replaced for all the purposes of this M.O.U by a slight but significant change of wording in Clause 8(1). It had been changed in 1995 and again in 1999. In my opinion this error was sufficient to make the decision invalid. This is not a criticism. I can only assume that the Tribunal was not properly directed on the up-to-date version.

[14] The second error invalidates the decision, but also points the way to the right (in my opinion) decision. The Tribunal relied fundamentally on the definition of a "day" in the Employment Act. Now that Act itself states that its definition is only a meaning for that word "in this Act" (s.2). That is a fundamental interpretation guideline; only in that Act. The parties' dispute has nothing much to do with any provision for "days" in that Act.

[15] The Tribunal held that a "day" as defined in the Employment Act does not change its meaning (midnight to midnight) when parties' negotiate about a "rest day", but the Act and the Collective Agreement are different instruments, for different purposes.

[16] The employer submits that the Tribunal also seemed to hold (at page. 6) that the rest day must be taken on the 7th day as well as being midnight to midnight. It seeks a ruling. I am not sure the Tribunal went that far, and it certainly is true as the Tribunal said that if a worker has worked six days then he is entitled by **R.8 (1)** to absent himself from work on the seventh day". One must note he is only "entitled". He may work that day and be paid overtime pursuant to Clause9 of the MIO (below). If he takes it before he has worked six days then he will be committed to working more than six days after that before his next "seventh day" entitlement is due. That cannot be allowed, it is contrary to the guarantee of a rest day after six days of work. As for "midnight to midnight", as stated above the Act cannot be called in aid to interpret a rest day as being midnight to midnight.

[17] Without the aid of the statutory definition, one must interpret the meaning of a "rest day" in the context of previous agreed interpretations of a "rest day" plus the context of the words. The context is first the words of the new provision in the 2000 M.O.U and second the words in those parts of the Collective Agreement that relevantly co-exist and have force along with the new words.

[18] Colouring the whole exercise is the fundamental fact that the provision being interpreted is a provision for continuing shift work in a 24-hour seven-day operation. I think it adequate to say I

accept the detailed and fully supported arguments that are set out in the Appellant's submissions. I prefer to avoid repeating what is there. For the reasons adequately set out above and if that seems insufficient then for the reasons more fully set out in those submissions, I adopt the Appellant's interpretation of the term "rest day" and I uphold this appeal.

[19] However in doing so I cannot accept the Appellant's submission that the MIO Clause 8(1) cannot cover persons working FSC shift patterns. I am unable to follow the arguments in support of that and cannot accept that a shift worker is deprived of its benefit just because he works shifts. The employer of shift workers cannot avoid its obligation to provide a rest day once every seven days. By the same token the next following clause of the MIO, Clause 9(1) (b) (iii) provides that a 6-day worker may work on his rest day, and if he does he must be paid overtime. The collective agreement picks this up at Clause B7 and improves the pay rate.

Conclusion:

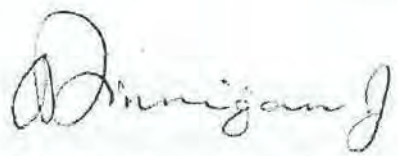
[20] I find that the Tribunal erred in the definition which it made of a "rest day" in the context of this 1962 collective agreement and of the Memorandum of Understanding dated 19 December 2000.

[21] I therefore quash that part of the decision of the Tribunal which contains that definition and its conclusion that a rest day in the present context should embrace the hours from midnight to midnight.

[22] I hold that the Appellant in employing shift workers is bound by

Clauses 8 and 9 of the Wages Regulations (Manufacturing Industry) Order 1999. It must roster 6-days per week shift workers a rest day within every 7 days and if the worker works on his rest day it must pay him a better rate of overtime than prescribed in clause 9 (3) (b). It must pay the rate set in clause B7 of the collective agreement while that clause remains. I hold that the Appellant does comply with the requirement for a rest day in clause 8 (1) of the above 1999 Wages Regulation Order when giving each shift worker in the circumstances traversed in this appeal a period of at least 24 hours rostered off even if this period does not include 24 hours from midnight to midnight.

[23] Costs were not sought by the Appellant and in my view each party should pay its own costs. No order is made.



D.D. Finnigan

JUDGE

At Lautoka

20 October 2006