

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

APPELLATE JURISDICTION

CASE NUMBER: ERCA 06 OF 2014

BETWEEN: **CARPENTERS FIJI LIMITED t/a MORRIS HEDSTROM**

APPELLANT

AND: **MAMTA DEVI RAJ**

RESPONDENT

Appearances: Mr. E. Narayan for the Appellant.

Mr. Serulagilagi for the Respondent.

Date/Place of Judgment: Tuesday 28 January 2020 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

A. Catchwords:

***EMPLOYMENT LAW** – summary dismissal of the employee – whether dismissal lawful and fair– in examining the lawfulness of the termination, one has to assess whether the reasons for the dismissal is proper and whether proper procedures prescribed by the law has been followed- in determining the fairness of the termination, it has to be assessed whether the employer’s conduct in terminating the employee was proper and did not cause any humiliation, loss of dignity and injury to the feelings of the worker.*

B. Cases:

1. *Blyth Chemicals v. Bushnell (1933) 49 CLR 66.*
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Cause and Background

1. The employer appeals against the decision of the Employment Relations Tribunal (***“ERT”***) of 6 May 2014 wherein it held that the termination of the employee Mamta Devi Raj was unlawful and unfair.
2. On its findings, the ERT ordered the employer to pay to the employee 10 months lost wages for unlawful dismissal. The 10 months’ was calculated from the date of mediation of the grievance to the date of the hearing of the cause at the ERT.
3. In addition to the above remedy, the ERT also ordered that the employer pays to the employee 3 months wages as compensation for humiliation, loss of dignity and injury to the feelings of the worker.
4. A brief background surrounding the employment and termination is essential.
5. The employee was employed by the appellant CFL from 23 September 1996. Since 23 November 2010, she held the position of a cashier at Homemaker, Labasa Branch. She was terminated from her employment on 1 April 2011.
6. The termination letter outlines the reason for which she was terminated. It says as follows:

“Management wishes to express its disappointment on your recent conduct whereby you have failed to take appropriate action in relation to the customer product dispute. You have admitted to not receipting the funds received from the customer.

Furthermore you failed miserably in role as a cashier by not following company procedure in relation to receipting and proper accounting of monies received from customers. Your actions are in breach of the company policies and it is further aggravated by the fact that you failed to report the incident to your management.

The behavior is unacceptable as you are well aware of the expectations of your role since you have been in employment with us from 1996. We are of the view that you have been grossly negligent and have shown laxity in your work. And as such we have no option but to terminate your contract of service with immediate effect.

You will be paid one week's pay in lieu of notice less any monies owed to the company.

By a copy of this letter, the wages clerk is asked to pay you all monies due after the necessary clearances are made”.

7. The backdrop of the termination is that one Dharam Raj had given his Nokia Phone to the employer's Labasa Branch for repairs. The phone was given on 04 October 2010. The initial complaint by the customer was that the LCD screen of the phone was slightly damaged.
8. When the customer received the phone, he noticed that there were more damages to the screen. The customer then somehow contacted one Mr. Vijay Lourdenadin, an authorized personnel of CFL.
9. Mr. Lourdenadin approved that any repair charges to the phone shall be shared equally by the customer and Morris Hedstrom. The customer paid his share of \$35 on 8 February 2011. This sum was received by one Mr. Ram Narayan Singh and given to Mamta Devi Raj for safe keeping. The instructions for Mamta to keep the said monies came from the Branch Manager Sunny Deo. The money was kept in the cashiers till. It was later discovered missing on 26 March 2011.
10. Upon the customer's complaint, several people were interviewed. The employee admitted in her interview that she did not follow the company procedures of issuing the receipts to the customer.
11. The employer's concern is that as per the policy, the money should have been receipted and a copy of the receipt ought to have been given to the customer. Further, the employer is

concerned that no care was taken in keeping the money safely and on the day of the interview both Mamta Raj and the Branch Manager Sunny Deo quietly paid off the money.

Findings of the ERT

12. The ERT found that the employee was not negligent and showed any laxity at work because she was informed by her Manager to keep the money and not issue the receipts. The responsibility therefore should be taken by the Manager Sunny Deo.
13. In analyzing whether the procedure to terminate the employee was fair, the ERT found that after the investigation, the employee should have been given a right to mitigate and not be terminated straight away.
14. Further, the ERT found that before the employee was terminated, she was entitled to all information obtained and a right to comment on the information. She was also entitled to a right to be represented at all stages of the enquiry. It was the finding of the ERT that if the grievor had access to all the information and legal advice, she would not have said all those things she did in the interview.
15. Since the employer did not have proper reasons to terminate the employee and that it did not follow the proper procedures, the termination is unlawful and unfair and the employee is entitled to the remedies as ordered by the ERT.

Grounds of Appeal

16. Aggrieved at the decision, the employer appealed stating that the finding of unlawful and unfair dismissal is an error as there was sufficient evidence to show that the employee was negligent and breached her duties as a cashier.

17. The employer also raised that the ERT's finding that the employee was not given access to all the information to comment upon, an opportunity to be heard and mitigate, incorrect in fact and not supported by the evidence adduced at the trial.
18. It is also the employer's concern that the remedy for unlawful and unfair dismissal is not supported by any evidence or justified on the facts of the case.

Analysis

19. In this case, the employer had exercised its right to summarily dismiss the employee for not following the company procedures in handling the money obtained from a customer and for not keeping his money safe in custody.
20. Since Mamta Devi Raj was the custodian of the money, she cannot hide behind the fact that she was told by the Branch Manager not to receipt the money. The instructions that she received was not lawful and to avoid giving the customer a receipt after taking cash from him is breach of company procedures and affects the loyalty of the staff.
21. It is a dishonest practice not to receipt money received from a customer. Mamta should have followed the proper company procedures and not be swayed by instructions from her superior. She has been in the service for so long and I do not think that she does not know that all monies received, irrespective for whatever purpose it is for, should be acknowledged by a document.
22. Further, it unfolded in the evidence that the money should have been sent to Suva and not kept with her as if she is the owner of the cash. If she kept it, it was her duty to ensure that it was kept safely. It is her negligence that led to the money being missing. There is also no reason why the money was kept with her for so long. She could have refused to take responsibility without accounting for the money. That was not part of her job to keep someone's money without a receipt and acknowledgment.

“Conduct which in respect of important matters is incompatible with the fulfilment of an employee's duty, or involves an opposition, or conflict between his interest and his duty to

his employer, or impedes the faithful performance of his obligations, or is destructive of the necessary confidence between employer and employee, is a ground of dismissal.

Blyth Chemicals v. Bushnell (1933) 49 CLR 66.

23. This was an act that dissatisfied the customer to a large extent and he was very aggrieved. He had been running after his phone and when he was told that his money was missing, that affected him. Such disgruntled customers do not target individuals but the company for which these individuals work. The company's repute and customer service satisfaction is affected.
24. I find that it was Mamta's misconduct of breaching company procedures and negligently handling the cash which warranted summary dismissal. She therefore had been properly terminated.
25. When summary dismissals are being carried out, the employee is only entitled to a written notice stating the reasons for dismissal, up to date pay, and a certificate of service. That is all the procedural requirement that is prescribed by the law. There is no evidence that the procedure required by the law had not been fulfilled.
26. The ERT went on a consideration of its own in finding whether the procedure was correct. There is no requirement in law for a hearing, a right to representation and a right to mitigation. If the employer wishes to conduct an investigation to be satisfied on whether a ground for summary dismissal exists, it is their prerogative to do so.
27. There may be cases in which some degree of consultation and investigation is required for the employer to form an opinion on the allegations. However, the law does not mandate such a requirement in summary dismissal cases.
28. In this case, the employee was offered a right to be heard, which was something, she otherwise was not entitled to under the law.
29. When assessing whether the termination is fair, the ERT was to assess whether the manner in which the employee was terminated was proper and find whether the actions and conduct of

the employer was such that caused the employee humiliation, loss of dignity or caused injury to her feelings.

30. In this case there was no evidence that the manner in which the employee was terminated was not proper. There was no evidence of improper conduct of the employer. I therefore find that the finding of unfair termination and the remedy granted for the same is wrong in law and in fact.

Final Order

31. In the final analysis, I find that the dismissal of the employee was lawful and fair.

32. I therefore allow the appeal and set aside the orders of the ERT.

33. I order that each party bears their own costs of the appeal proceedings.



A handwritten signature in blue ink, appearing to read "Anjala Wati", is written over a horizontal dotted line.

Hon. Madam Justice Anjala Wati

Judge – High Court Suva

28.01.2020

To:

1. *Patel Sharma Lawyers for the Appellant.*
2. *MC Lawyers for the Respondent.*
3. *ERCA 06 of 2014.*