

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

APPELLATE JURISDICTION

CASE NUMBER: ERCA 26 of 2018

BETWEEN: **ITAUKEI LAND TRUST BOARD**

APPELLANT

AND: **INIA QOLI TAVATUILAGI**

RESPONDENT

Appearances: Ms. K. Suveinakama for the Appellant.

Mr. K. Maisamoa for the Respondent.

Date/Place of Judgment: Friday 11 August 2023 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

JUDGMENT

A. Catchwords:

Employment Law - Appeal - whether the tribunal was correct in ordering that the worker should be paid his retirement payment pursuant to the contract.

B. Legislation:

1. *Employment Relations Act 2007 ("ERA"): s.30.*

Cause

1. On 18 March 2016, the worker applied to the tribunal seeking an order for the employer to pay him his retirement benefit pursuant to s. 30(1) of the Employment Relations Act.

2. The employer opposed the application on the grounds that the employer had appealed the decision of the tribunal of 10 June 2015 wherein the tribunal had ordered that the worker be reinstated to his former position with no loss of wages and benefits. In that appeal the employer had sought clarification from the appellate court on whether the tribunal meant reinstatement from the date of termination or from the date of its judgment and if it meant that it should be from the date of the termination then it would have exceeded its jurisdiction as the wages from the date of termination would exceed \$40,000.00.
3. The tribunal found that the appeal had nothing to do with the issue of payment of retirement benefits which is one of the benefits in the employment contract. The tribunal therefore ordered that the worker be paid his retirement benefit as per the contract.
4. The employer appeals that decision to pay the retirement benefits on the grounds that:
 1. *The affidavit in support of the application did not support the grounds for the payment of the retirement benefit.*
 2. *The tribunal erred in holding that the appeal against the decision of the tribunal's ruling of 10 June 2015 had nothing to do with the retirement benefit when his decision rendered the appeal nugatory as it still had not been determined.*
 3. *The tribunal erred in fact by determining that the worker was entitled to be paid the retirement benefit without considering and failing to provide any lawful basis for making that determination.*

Law and Analysis

5. In the tribunal, the worker had made an application seeking that his retirement payment be made to him under s. 30(1) of the Employment Relations Act which states that, "*upon the termination of a contract of service, the employer must pay to the worker all wages and benefits then due to the worker by end of the following working day.*"

6. The motion was brought pursuant to s.30(1) of the Employment Relations Act as the worker had considered retirement payments as a benefit and since the contract of the worker had come to an end, it was considered proper to apply under s.30(1) of the Employment Relations Act.
7. It is my view that s. 30 was invoked to indicate the timeframe when the retirement payment was due. S. 30 (1) does not apply in this case. It neither provides the right to the retirement benefit, nor does it apply to this worker in terms of time for payment of the benefit as his employment cannot be considered to have been terminated given that he was reinstated to his position. However, that is not the pivotal issue in this case. One must not get carried away because a wrong provision of the law is being invoked. The main issue is whether the worker is entitled to the retirement payment and where does his right arise from?
8. Indeed the law does not determine the retirement benefit. The contract does. The counsel for the employer provided to me a copy of the contract from where the right to the retirement benefit arises. The provision is clause 8.05 and 8.06 of the iTaukei Land Trust Board Terms and Conditions. It reads:

“Retirement

8.05 The retirement age for all employees shall be 55 years of age, however in exceptional cases the Board may request an employee to continue in employment after reaching 55 years of age.

8.06 On retirement from the Board an employee shall be entitled to a retirement benefit of a lump sum equivalent to:

(a) one year’s salary provided that the employee has served at least 20 years continuous service with the Board;

(b) Six months’ salary provided the employee has served 10 years continuous service with the Board.”

9. The employer argues that the tribunal did not have before it any evidence to make a finding that the worker is entitled to the retirement benefit. I am surprised that the employer is raising this issue because in the original cause before the tribunal, the main

basis for the objection was not on the right to seek the retirement benefit but that there was a pending appeal which the employer wanted to have determined before the issue of retirement payment was decided. The tribunal was then correct in stating that the issue on appeal was different from the right to receive the retirement payment.

10. On the reason why the retirement payment should not be made, the employer agreed that the worker has served the employer for over 20 years but since he left with a tainted employment history leading up to his retirement, the employer has a discretion to refuse the benefit.
11. The contract does not provide that discretion to the employer to hold the retirement entitlement. It uses the word “*shall*” in clause 8.06 making it mandatory that the retirement benefit be paid as long as the worker has served for 20 years continuously.
12. I find from the court records in ERCA 12 of 2015 between the same parties that Inia Qoli started work with ITLTB on 11 May 1981. He was summarily terminated on 28 May 2009. Even before being terminated, he had served for 20 years and when he was reinstated his contract came to an end by retirement. He cannot be considered to have been terminated because he was ordered to be reinstated which order was complied with. There is no pending appeal on the correctness of that order for reinstatement.
13. The worker is therefore entitled to payment of the retirement benefit. The employer has no right to withhold that payment or benefit. The tribunal may not have had the contract document before it to come to a factual finding but now that I have seen the relevant documents, I find that it was correct in ordering that the retirement payment be made to the worker in terms of the terms and conditions of service. I also agree with the tribunal’s finding that the issue of payment of retirement benefit was not connected to the appeal.
14. The issue on appeal was whether the worker should be paid his wages and benefit from the date of termination to the date of the order of reinstatement. In the application for payment of retirement benefit the issue before the court was whether he is entitled to

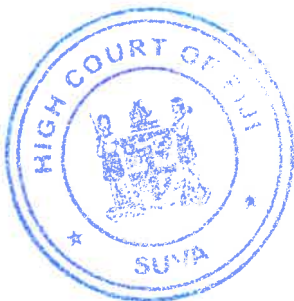
the retirement benefit. There is no way in which the appeal had a bearing on the application for payment of the retirement benefit. There could be some argument if the worker had not completed 20 years of service until the date of termination.

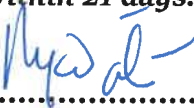
15. The employer could have arguably raised that if the tribunal did not mean payment from the date of termination then reinstatement from the date of the order of the tribunal would mean a break in service. However, this argument even did not apply to raise or contend that the tribunal proceeding with the issue of payment of the retirement benefit made the appeal nugatory. In any event the appeal before me in ERCA 12 of 2015 does not assist the employer as I have struck it out and the judgment in that appeal will be delivered together with this appeal.

Final Orders

16. In the final analysis I make the following orders:

- a. ***I find the appeal without merits. I dismiss the same and uphold the order of the Tribunal. I order the employer to pay to the worker the retirement benefit under clause 8.06 (a) of the ITLTB Terms and Conditions of Services.***
- b. ***The employer is to further pay costs of the appeal proceedings in the sum of \$5,000.00 to the worker within 21 days.***




.....

Hon. Madam Justice Anjala Wati

Judge

11.08.2023

To:

- 1. Legal Department, iTaukei Land Trust Board for the Appellant.**
- 2. Maisamoa & Associates for the Respondent.**
- 3. File: Suva ERCA 26 of 2018.**