

**IN THE EMPLOYMENT RELATIONS COURT AT SUVA
ORIGINAL JURISDICTION**

CASE NUMBER: ERCC 19 of 2020

BETWEEN: DR RAJENDRA PRASAD
PLAINTIFF

AND: FIJI NATIONAL UNIVERSITY
DEFENDANT

Appearances: Mr. S. Nand and Mr. J. Rueben for the Plaintiff.
Mr. F. Haniff and Ms. P. Devi for the Defendant.

Date/Place of Judgment: Friday 3 May 2024 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

JUDGMENT

A. Catchwords:

Employment Law - claim for breach of contract- plaintiff alleges that he was wrongly terminated from work when he was paid full price of the contract and not allowed to perform work - plaintiff claims that when his contract was not renewed, he was entitled to reasons for non-renewal - plaintiff was not entitled to reasons for non-renewal under the contract as the contract was expressed to be non-renewable- the contract cannot be said to have been varied to the disadvantage of the worker or terminated when the full price of the contract was paid to the worker although he was not required to perform work- carrying out of exit procedure in this case did not cause the worker humiliation, loss of dignity or injury to his feelings in this case.

B. Legislation:

Employment Relations Act 2007 ("ERA"): ss. 24; 33; 34; 114 and 220.

Claim

1. The proceedings brought by the plaintiff is founded on his contract of employment: **s. 220(i) of the ERA.**
2. The plaintiff says that the employer breached the contract of employment when it informed him within 3 months of the expiration of his contract that it will not be renewed without providing any reasons and paying him lump sum for the balance term of his contract and not allowing him to work thereafter.
3. He says that the employer's action amounted to summary termination of work. He was therefore, he claims, entitled to be provided with a written notice stating the reasons for the termination as required by s. 33(2) and s. 114 of the ERA.
4. The plaintiff also claims compensation for unfair dismissal. He says that he suffered depression, mental anguish, loss of dignity, trauma and a feeling of despair and lack of self-worth for how he was treated.
5. The plaintiff says that he was being punished by the employer. He says he had raised various malpractices and financial irregularities within his Faculty.
6. According to the plaintiff, the employer and its officers namely the Dean of Faculty of Science and the Director Human Resources aided and abetted to cover up the concerns raised by him.

Agreed Facts

7. The plaintiff Dr. Rajendra Prasad was employed by Fiji National University under a contract of employment from 3 January 2017 to 2 January 2020.

8. The plaintiff was employed as a Professor and Head of Department in the Department of Chemistry, Faculty of Sciences, College of Engineering, Science and Technology based at Lautoka Campus.
9. On 17 September 2019, the employer wrote to the plaintiff and informed him that his contract was due to expire on 2 January 2020 and will not be renewed.
10. On 23 October 2019, the employer wrote to the plaintiff and informed him that it was going to pay him for the balance term of his contract.
11. The plaintiff was paid \$36,826.62 in lump sum on or about 25 October 2019. This is the amount that the plaintiff would have been paid if he had worked until the expiry of his contract of employment.

The Defence

12. The employer denies that it breached the contract of employment or the provisions of any law when it paid the plaintiff for the full term of his contract. The employer says that the contract of employment was expressed to be non-renewable and that the plaintiff could not have expected to have his contract renewed under the clear provisions of the contract.
13. The employer also states that it was obligated to employ the plaintiff until the end of his contract which obligation was fulfilled by payment for the full contract price. There is no breach of the contract as a result.
14. The contract could be renewed if the employer so decided but this option was not exercised. The employer refutes any malpractice or malice when it paid the plaintiff full term of the contract and decided not to renew his contract of employment.

15. It says that it fulfilled its obligation under clause 22 of the contract when it gave the plaintiff written notice that his contract will not be renewed.

Evidence/Law and Analysis

16. The issue before me is to determine whether the employer has breached the contract of employment by:

- (i) *Not renewing the plaintiff's contract without providing any reasons; and*
- (ii) *Paying the plaintiff all monies due until the expiry of the contract without requiring the plaintiff to perform work.*

17. I also have to decide whether the manner in which the plaintiff was asked to complete the exit procedures caused him any humiliation, loss of dignity and injury to his feelings, thus entitling him for compensation for unfair dismissal.

18. I will deal with the issue of breach of contract first. The contract of employment was tendered in evidence as ***plaintiff's exhibit 1***.

19. Clause 2 of the contract of employment states:

"[2]

Term of Contract

2.1

This Contract is for a term of (3) years effective from 3rd day of January 2017 and unless terminated earlier under the provisions of this contract shall terminate by expiry on 2nd day of January 2020.

2.2 *This contract shall not be renewable. However the parties may subject to Clause 22, in writing agree to extend the term of this contract or renew this contract or enter into a new contract.*

2.3 *Nothing in this contract shall be deemed to confer an automatic right of renewal or a new contract under any circumstances.”*

20. Clause 22 states:

“[22] Renewal of Contract Upon Completion

22.1 *At least 3 months prior to the expiration of the period of appointment under this contract, the FNU shall notify the Worker whether it intends to renew this contract or offer the worker a new contract. Should the employer fail to notify the Worker on or before this date, this contract shall not be automatically renewed, instead, the employer shall pay the employee a sum equivalent to the employee’s basic salary for the period why which such notification was delayed.*

22.2 *In the event the Employer and the Worker agree that the Worker shall enter a further contract on termination or completion of this contract, the continued service of the Worker will be recognized under the new contract so as to avoid any break of service and any accrued or pro rata entitlements will be carried forward into the new contract.”*

21. On 17 September 2019, the employer had informed the plaintiff that his contract of employment will not be renewed. The letter of 17 September 2019 was tendered in as **plaintiff’s exhibit 3**. The letter reads as follows:

“17 September 2019

*Professor Rajendra Prasad (E3181)
Department of Chemistry and Industrial Lab Tech
College of Engineering, Science and Technology
Fiji National University*

Dear Professor Prasad

Non-renewal of Contract

We refer to your contract of employment dated 3rd January 2017, which is due to cease on 2nd January 2020.

We deeply regret to advise that your contract of employment which will cease on 2nd January 2020 will not be renewed.

You are welcome to apply for any other suitable position that may be advertised in the future.

Enclosed is an exit form that you will need to complete and return to us. We suggest you complete all the necessary clearance procedures and return all properties belonging to the University that you may have in your possession before close of business on 2nd January 2020 otherwise your final pay will be withheld.

Please feel free to contact us, should you need any clarification or wish to discuss the matter further.

We sincerely thank you for the services you have rendered to the University and we wish you well in your future undertakings”.

22. Clause 2 of the contract made it clear to the plaintiff that the contract was not renewable as of right. The plaintiff had agreed to this when he signed the contract of employment. The plaintiff therefore knew or ought to have known that he was not entitled under the contract for a renewal as of right. He therefore could not expect or require a renewal as of right. He also should not expect a

reason to be provided if a decision was made not to renew the contract. He agreed to the provision of the contract that it was not to be renewed unless the parties agreed to. If the employer does not agree to the renewal, that cannot be questioned. The same applies to the worker. If he did not agree to the renewal, the employer cannot bind the worker.

23. The plaintiff was however entitled to a notice of non-renewal within 3 months of the expiry of the contract under clause 22.1 of the contract of employment. The employer fulfilled this part of the contract by a letter of 17 September 2019.
24. The employer did not wish to renew that contract. It cannot be said to have breached the contract when it acted within the provisions of the employment contract to decide not to renew the contract. The contract does not impose on it an obligation to discuss and consult with the worker about the renewal and consider the same.
25. When the employer decided not to renew the contract, it was under no obligation to provide the reasons. The contract already indicated that it was non-renewable. The contract provides the answer for non-renewal. The contract of employment does not impose the obligation on the employer to provide reasons for non-renewal of the same.
26. I now turn to the plaintiff's allegation that the payment of the full contract price and precluding the worker from performing his services amounted to summary dismissal of the employee.
27. I do not find that the plaintiff was terminated from work or that the term of expiry was brought forward. The plaintiff's term of contract was maintained. He was paid all the wages for the full term of the contract. He was not required to

work for the balance term of his contract. If the plaintiff worked, he would be entitled to salary until the end of the contract. He was paid that in lump sum.

28. Summary dismissal occurs when an employment is terminated for lawful cause. In a case of summary dismissal, a worker is not paid wages until the end of the contract. He is only entitled to wages until the date of dismissal as per s. 34 of the ERA. This therefore could not be categorized as a summary dismissal case.

29. If the contract was terminated then indeed the worker was entitled to reasons for the termination: **ss. 33(2) and 114 of the ERA**. I find that this was not a case where the contract was terminated. It came to an end on expiration. If the date of expiration was brought forward or the contract terminated then there was no basis to pay the balance of the contract.

30. I do not even regard this as variation of the contract. Nothing had changed to the disadvantage of the worker. Although, he was not required to perform work, the employer had acted within the provisions of s. 24(b) of the ERA.

31. S.24 of the ERA reads:

“[24] Duty of Employer to Provide Work

An employer must-

(a) unless the worker has broken his or her contract of service or the contract is frustrated or its performance prevented by an act of God, provide the worker with work in accordance with the contract during the period for which the contract is binding on a number of days equal to the number of working days expressly or impliedly provided for in the contract; and

(b) if the employer fails to provide work to the worker the employer, pay to the worker, in respect of every day on which the employer so fails, wages at the same rate as if the worker had performed a day’s work.”

32. Under s. 24 of the ERA, the worker was entitled to be provided work under the contract of employment until its expiry. If an employer fails to provide work, its obligations under s. 24 (b) is to pay to the worker wages at the same rate as if the worker had worked. The employer paid the worker as if he had worked. There was therefore no breach of the contract of employment or the law.
33. The plaintiff says that he had made complaints against the Head of School for financial malpractices and that is why the Head of School refused his personal requisition form (PRF) for renewal.
34. The PRF in evidence was dated 23 September 2019. That was not filled by the Head of School. It is clear that the Head of School did not get involved in this worker's case.
35. The plaintiff says that there are others PRF's which the Head of School had refused for renewal. Those PRF's were not tendered in evidence to show that the Head of School acted in the plaintiff's case and refused to endorse that his contract should be renewed.
36. I do not find that there is any evidence to show that the Head of School against whom the plaintiff had made allegations of malpractice had any influence in making the decision for non-renewal. There is no evidence that he was involved in the decision making process.
37. I now turn to the issue of unfair dismissal. The plaintiff says that he was unfairly treated when asked to complete the exit formalities within 24 hours. I do not find anything humiliating or untoward by asking an employee to complete the exit procedure.

38. In this case the employer wrote and asked to complete the exit after close of business. Most employers carry the procedure during official hours when other employees and staff are still present. Outside business hours was chosen for the exit procedure in this case which shows that the employer was mindful of the plaintiff's feelings if he was asked to exit during official hours.

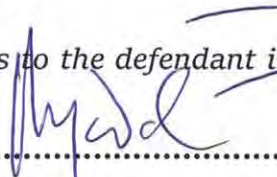
39. Exit procedure is normal in all institutions. It has to be carried out. As long as it is done in a dignified manner, there is no prohibition in carrying it out. I do not find that the employer conducted itself in a manner that was unfair and caused the worker humiliation, loss of dignity and injury to his feelings.

40. I do not find that the worker has established breach of any contractual provisions or the law. I also do not find that he has established unfair dismissal.

Final Orders

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

- (a) *The plaintiff's claim is dismissed.*
- (b) *The Plaintiff is to pay costs to the defendant in the sum of \$5,000 within 21 days.*

.....


Hon. Madam Justice Anjala Wati

Judge

03.05.2024



To:

1. *S. Nand Lawyers, Lautoka for the Plaintiff.*
2. *Haniff Tuitoga Lawyers for the Defendant.*
3. *File: Suva ERCC 19 of 2020.*