



thereafter and in June 2009 the respondent was transferred to Butaritari as Officer in Charge.

3. On 30 July 2010 he received a letter dated 29 July 2010 from his employer which dispensed with his service as from 2 August 2010.
4. The respondent brought these proceedings in the High Court to recover amounts which he claimed as due to him upon completion of his service. He relies upon the provisions of the *National Conditions of Service* [NCS] and it is common ground between the parties that these conditions govern the respondent's entitlement. The respondent claims the cost of repatriation to his home island (Makin), salary in lieu of notice and maintenance expenses until repatriation.
5. The relevant extracts from NCS are as follows:

*H.15 An employee travelling on retirement or on termination of appointment other than on dismissal, and on completion of contract, is entitled to transport for himself, his wife and all of his children from place of duty to his home island in the class appropriate to his post provided the passages are taken up within six months.*

*E.45 On retirement: an employee proceeding by sea on retirement or on leave pending retirement at Government expenses will be eligible to take with him at Government expense up to 600 cu. ft. of effects. To qualify for this allowance, transport of baggage must take place within six months of the employee's last day of duty.*

*C.10 (i) Except where statutory provisions otherwise provide, an employee must retire on reaching the age of 50 years. No employee may continue in service after reaching the age of 50 years except on reappointment on contract terms or on temporary terms only for the purpose of awaiting repatriation.*

(ii) Cabinet, in its meeting 29/01 (2) of 13/9/01, has decided that as a policy for retiring officers, a permanent employee who has satisfactorily served Government up to the official retirement age including any authorised extension and has to be repatriated back to his home island, his terms of appointment is allowed to continue working and to continue occupying a Government housing until the first available transport to his home island is ready (PSO Memo No. 291/01).

C.1 The appointment of a permanent employee may be terminated at any time by giving him two months' notice in writing or by paying him one month's salary in lieu.

6. The decision of the High Court was in the following terms:


ORDER: Judgment for the plaintiff with the following orders made:


- (1) Defendant to pay costs of repatriating plaintiff and family back to Makin Island without further delay.
- (2) Defendant shall pay \$480.00 (one month's salary in lieu of notice) to plaintiff;
- (3) Defendant to pay subsistence expenses to the plaintiff and his family at rate of \$45.00 per day from 2 August 2010 until date of repatriation.
- (4) Costs to the plaintiff.

7. It appears that although the appellant does not dispute an obligation to repatriate the respondent and his family to Makin Island, in fact at the time of trial on 29 April 2011 the respondent and his family were still awaiting transport. Although a purchase order for the tickets was raised on 2 November 2010 the tickets have not been made available to the respondent. The appellant is in default under the terms of NCS and the respondent was therefore entitled to an order as made by the Chief Justice for payment of repatriation costs.
8. The respondent was also entitled to receive one month's salary in lieu of notice. His employment did not come to an end on his 50<sup>th</sup> birthday. He was allowed to continue thereafter and his service could only be terminated by his employer upon due notice or payment in lieu. In this case the employment came to an end in terms of the letter dated 29 July 2010 and one month's salary therefrom became payable. The Chief Justice currently identified this entitlement.
9. It is debatable as to how the claim for a "subsistence allowance" should be treated. Arguably the cost of repatriation includes the cost of maintenance while the respondent is awaiting transport. Alternatively it is arguable that the respondent is entitled to damages when the employer fails to make arrangements for prompt repatriation. It does not matter how the entitlement is characterized. However the Chief Justice was correct in making his award.
10. Upon this appeal the appellant has not challenged the rate of \$45 allowed by the Chief Justice which equates to \$315 per week.

11. We reject the appellant's submission that the employment terminated on the respondent's 50<sup>th</sup> birthday. In the circumstances the employment did not terminate until 2 August 2010 in accordance with the notice from which the rights of the respondent arise upon the application of the terms of the NCS.
12. There will be an order that the appeal be dismissed. The appellant will pay to the respondent his costs to be fixed by the Registrar in default of agreement.

  
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Paterson JA

  
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Williams JA

  
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Barker JA