



IN THE HIGH COURT OF KIRIBATI
CIVIL JURISDICTION
HELD AT BETIO
REPUBLIC OF KIRIBATI

HIGH COURT CIVIL CASE 101 OF 2010

BETWEEN: ITINNANG UAN & OTHERS PLAINTIFFS

AND: ATTORNEY GENERAL IRO DIRECTOR,
KIRIBATI NATIONAL STATISTIC OFFICE
MINISTRY OF FINANCE DEFENDANT

FOR THE PLAINTIFFS: MS TAOING TAOABA
FOR THE DEFENDANT: MS TAAIRA TIMEON

DATE OF HEARING: 17 NOVEMBER 2010

JUDGMENT

The plaintiffs were employed on contract as members of the Demographic Health Survey being carried out by the Kiribati National Statistics office in 2009. They all worked on South Tarawa.

They have two complaints. First, that although they were expected to and did in fact work on Saturdays they were not paid overtime. Secondly that although in accordance with the contract KPF deductions were made from their wages the deductions have not been paid by the defendant to the KPF.

The relevant clauses in the contract agreement:-

4. Wages

- a) The wages will be at the rate of Level 14 of the Government salary scale, equivalent to gross wage of \$242 fortnight before KPF is deducted.

5. **Payment of remuneration (Wage)**

a) The payment of wage will be paid on Friday every fortnight.

6. **KPF**

a) The wage is subject to requirement under the KPF Act.

No mention of overtime in the Contract.

The Survey was to be carried out between 23 September and 8 December 2009. The Work Plan (Exhibit P4) shewed the plaintiffs were expected to work six days a week.

Nei Taungare Tiaora, the Supervisor of one of the three teams of workers, was the only witness for the plaintiffs:-

We worked six days each week and one member worked on seventh day. We understood we would be working six days per week Tekena told us at a meeting that we should carry on with overtime. They said there would be overtime. (Examination in chief).

No mention of overtime in contract but we took up our complaint and they said there would be overtime. Tekena mentioned at the meeting there would be overtime. He will talk about it with Nei Reeti that there should be overtime. "There should be overtime paid to you and I will tell N. Reeti and Kaobari that it should be paid". We had refused to work on a Saturday. Tekena said "You work on a Saturday and I will tell them overtime is to be paid". We all agreed to work on a Saturday as Tekena agreed there would be overtime. (Cross examination).

The meeting with Tekena was held on 28 September. He is the Director of Statistics and was in charge of the Survey.

Nei Taungare's evidence is unchallenged. I accept it beyond the mere balance of probabilities.

Tekena told the plaintiffs that they would be paid overtime. They carried out their work believing they would be paid overtime. Whether he had actual authority to give the undertaking or not he, the Director of Statistics and in charge of the Survey, certainly had ostensible, apparent authority to give the undertaking.

Nei Reeti Takaria was the witness for the defendant. Nei Reeti is Assistant Statistician:-

Survey – Project funded by SPC. Complaint about overtime
complaint came in after meeting with Tekena.

Workload Plan – Nei Kaobari prepared it – employed by SPC but came
as a trainer. Only a guideline of how they would carry out survey.
Figures shew number of people to be interviewed. Interviews on a
Saturday.

Workplan concerns only those on Tarawa.

Ms Timeon argued that as there was nothing in the Contract Agreement
about overtime, so the plaintiffs were not entitled to it. The argument
could be sustained if it were not for Tekena's undertaking at the meeting
on 28 September. The plaintiffs accepted the undertaking and carried
out their work in the belief overtime would be paid. The undertaking
imported another condition into the Contract Agreement – that the
plaintiffs would be paid overtime. The plaintiffs succeed in their claims.

Nei Reeti pointed out that the plaintiffs in their claims have fixed their
own rate. No rate has been fixed. It was agreed by counsel that I
should first decide the entitlement (or otherwise) of the plaintiffs.
Counsel would then discuss what rate (or rates) should be used in
calculating the plaintiffs' damages. If no agreement is reached I shall
make an assessment.

The plaintiffs claim that although KPF contributions were deducted from
their wages, the defendant did not make payments to the Fund. That
may be so but I can give the plaintiffs no relief in regard to it. All I can do
is to say that if the defendant has not made the appropriate payments
to the KPF it should do so forthwith.

The plaintiffs are entitled to be paid overtime.

Dated the 19TH day of November 2010

Robin Millhouse

THE HON ROBIN MILLHOUSE QC
Chief Justice

