

LUCY (ANTHONY) v ATTORNEY GENERAL

Supreme Court Apia
Ryan CJ
12 June, 21 June 1990

CONTRACT - Term - Gratuity - method of calculation - definition of salary - contract silent on pay intervals - pay advice slip indicated days worked.

HELD: Each fortnight pay was based on 10 working days as indicated on the pay advice slip and the divider for calculating gratuity is 10 not 14.

CASES CITED: .

- Miles v Wakefield Metropolitan District [1987] 1 All ER 1089
- Crown Employees (Teachers - Department of Education) Award
re Deduction for Strikes [1975] AR 535

P A Fepulea'i for Plaintiff
F M Sapolu AG; E Va'ai for Defendant

Cur adv vult

The Plaintiff sues the Defendant for A\$2416.49 and WS\$861.45 for what amounts to a gratuity based on length of Service which he says accrued over a period of 698 days whilst he was employed by the Public Works Department as an executive assistant.

The facts are not in dispute. The Plaintiff entered into a contract on 2 July 1987 for a period of 2 years. Payment was to be made partly in tala and partly in Australian dollars. The Plaintiff ceased his employment on 28 May 1989. His gross salary was then A\$37,632 and WS\$13,289.

Paragraph 19(a) of the contract between the parties provided:

"An officer who completes his term of service, or at least 12 months of his term of service, in Western Samoa shall be entitled to the payment of 1 day pay for each 12 consecutive days of service with the Commission. Where the contract has been completed such sum shall be calculated on the salary of the officer at the time of completion but in all other cases

such sum shall be calculated on the salary of the Officer over the previous 12 months (or if appropriate such lesser period) of Service."

The dispute between the parties revolves around the method of calculation of the gratuity. The Plaintiffs salary was paid fortnightly and the Plaintiff says that the correct method of calculation is to divide the fortnightly salary by 10 to arrive at the figure for "1 days pay" the figure of 10 being the working days each fortnight. The Defendant takes the stance that the division should be 14, there being that number of days in a fortnight.

The Plaintiff signed a contract which provided for inter alia a salary for each year and the document stated that the contract was subject to the provisions of the Western Samoan Public Service Regulations 1978 and a document entitled "Government of Western Samoa, Scheme of recruitment". The gratuity payment as set out in paragraph 19(a) is pleaded in paragraph 6 of the Statement of Claim.

Salary is defined under paragraph 2(j) of the foregoing document as "means the payment for services of an Officer including the adjustment allowance" Hours of work are stipulated in paragraph 33 - "An Officer shall work the regular hours of work of the Public Service and may be called upon to work such varied and/or additional hours in special cases without additional remuneration".

Nowhere in the contract documents are Mr Lucy's duties set forth. The most that can be taken from the documents is that he was employed as an "Executive Assistant - C/o Public Works Department".

The Defendant seeks to invoke the Treasury Instructions, issued it is said under the Public Moneys Act 1964, and the Act itself to show that the Plaintiff was an "accounting officer" as defined in the Act, but there is no evidence whatsoever before me that the Plaintiff was engaged in any shape or form in the collection or disbursement of public moneys and I reject the view that he was an accounting officer with the consequences which might flow from that position.

Counsel for the Plaintiff cited 2 authorities in support of his argument. Miles v Wakefield Metropolitan District [1987] 1 All ER 1089 and Crown Employees (Teachers - Department of Education) Award re Deduction for Strikes [1975] AR 535. Both decisions appeared to conflict one with the other. In Miles the officer concerned was paid an annual salary on a weekly basis and the House of Lords approved deduction of 3/37 of a weekly wage for failure to perform duties on 3 of the 37 hours and as counsel for the Plaintiff has correctly submitted necessarily established

that 1 hours pay is the quotient of the week's regular pay divided by the number of regular working hours in the week. By analogy Mr Lucy says the fortnightly pay represents payment for 10 days work not 14 days in the service of the Government. In the Crown Employees case Dey J in the N.S.W. Industrial Commission held that a deduction from a teacher's fortnightly salary of 1/14 and not 1/10 should be made. Each of these decisions reached the opposite result, one with the other, on the particular facts of each particular case. The decisions are helpful to this court in reaching its decision but neither is decisive. They demonstrate graphically that each case must be decided on its particular facts which will almost inevitably vary.

The contract, in its totality is silent on how payment is to be made insofar as payment intervals are concerned. The Plaintiff was required to work the normal hours of the Public Service - 37 and a half per week and such other work as might be necessary "in special cases". That provision for special cases clearly caters for the extraordinary rather than the normal situation. The Defendant did in fact make payment fortnightly and it is noteworthy, and in my view conclusive that in the pay advice which was issued to the Plaintiff there is a line which contains information as to the annual rate, days worked and fortnightly pay,

ANNUAL RATE	DAYS	FORTNIGHTLY PAY
\$	10	\$ c

together with some other information which is not relevant for the purposes of this claim. The significance of the number 10 in the box catering for days is I think self evident. It is a clear and unambiguous statement by the Defendant that it considered that the Plaintiff was being paid for 10 days work each fortnight and not for 14 days a fortnight. If that was the employers view for almost 2 years why does he now contest its own interpretation of the contract? That interpretation really accords with common sense.

I have therefore necessarily reached the conclusion that the Plaintiffs claim is soundly based - each fortnights pay was based on 10 working days and the divider therefore is 10 not 14 and there will be judgment for the amounts claimed in the respective currencies. He is also entitled to interest @ 8% from 28 May 1989 down to the date of judgment together with costs and disbursements as fixed by the Registrar.