

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

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HIGH COURT CIVIL CASE 120 OF 2009

BETWEEN: MWEA BATIARA PLAINTIFF

AND: ATTORNEY GENERAL IRO MINISTRY OF
WORKS AND PUBLIC UTILITIES DEFENDANT

FOR THE PLAINTIFF: MR BANUERA BERINA
FOR THE DEFENDANT: MS TAAIRA TIMEON

DATE OF HEARING: 26 APRIL 2010

JUDGMENT

The plaintiff, Mwea Batiara, was given by the Ministry of Public Works and Utilities temporary appointment as an operator from 29/05/06 to 31/07/06. The letter of appointment (Exhibit P1) is dated 7/06/06. That is the last letter he ever received. He started work on 29 May 2006 and went on working for the Ministry until some time in 2009 when he was paid off.

On 6 November 2006 he was sent to Nonouti to work. He remained there doing the same work (really mechanics work although classed as an operator) for a total of 827 days. He was paid \$197 per fortnight. At some time while he was working on Nonouti his pay was reduced from \$197 per fortnight to \$152 per fortnight. He was given no notice of the reduction, let alone any explanation for it. He continued all the time on Nonouti doing the same work. At first he was also paid a subsistence allowance of \$20 per day but later this ceased.

That is Mwea's evidence. It was not contradicted. Mwea appeared genuine and honest. I accept the accuracy of his evidence well beyond the balance of probabilities.

This claim is in a series of claims, the latest of which is *Koratika Tewaaki v Attorney General iro the Ministry of Health and Medical Services* (HCCC 186 of 2009). The facts of employment make it quite clear that whatever the paperwork (or lack of it), Mwea was in the full time employment of the defendant and entitled to be treated as a full time employee. That he was on two monthly contracts renewable, is a fiction. Even the defendant itself did not bother to follow the requirements of the NCS. Mr Mweia Tebubua, Deputy Secretary, admitted that the Ministry does not comply with NCS B2 which requires submission to the Public Service Commission "for extension beyond two months".

As for the subsistence allowance NCS E34 provides for payment up to a maximum of three months "except that the Under Secretary (PSD) may approve payment of subsistence allowance at a reduced rate of \$10 per day for a further period of three months only". The NCS is silent as to how an employee is to live if he is kept away – as the plaintiff was – for more than six months. Presumably the Ministry sought no approval: no evidence of any. Ms Timeon could not say how an employee, such as Mwea, was expected to live. Whatever is in the NCS or not, it would be quite unjust not to pay the allowance however long the Ministry has an employee away from his home.

The plaintiff should have been paid a wage at the rate of \$197 per fortnight, is entitled to all other benefits and allowances as if he had been recognized from the beginning as a full time employee and he is entitled to the appropriate leave allowance. He succeeds on liability.

Counsel agreed I should decide liability first and assess damages later if the parties can reach no agreement.

Dated the 28th day of April 2010



THE HON ROBIN MILLHOUSE QC
Chief Justice