# Teu v Commodities Board of Tonga

Privy Council
Appeal No.7/1988

24 February, 1989

*Contract - contract of employment - contract justifying summary dismissal*
*Employment - contract justifying summary dismissal*

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The appellant was employed by the Commodities Board as a branch manager and had been in the Board's employment for almost 34 years when he was summarily dismissed in 1982 for three forms of misconduct. The appellant brought proceedings in the Supreme Court claiming wrongful dismissal and the Court held that two of the three forms of misconduct alleged were not supported by the facts, but the third form of misconduct - alteration of records of copra sales for growers - was serious enough to justify instant dismissal. The appellant appealed to the Privy Council.

20 **HELD:**

Upholding the appeal:-

That the alteration of growers' records was in the circumstances not sufficient to justify summary dismissal, although it would have been sufficient to justify dismissal on three months' notice.

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| Counsel for appellant | : | Mr Edwards |
| Counsel for respondent | : | Solicitor General |

**Judgment**

In 1986 the Appellant issued proceedings against the Board alleging wrongful dismissal and seeking various remedies. Martin J. held that the dismissal was not unjustified and this appeal is against that decision.

Martin J's basic findings of fact were not challenged.

As at 1981 the Appellant, who had been in the employ of the Board for almost 34 years, was Manager of the Board's branch at Vava'u. Because of irregularities detected in the Vava'u branch's operations, which were being investigated by a Committee of the Board, the Appellant was recalled to Nuku'alofa resuming his duties with the Board there on the 2nd January 1982. On that day the Board's Director of Commodities, Mr Hurrell, told the Appellant of the irregularities at Vava'u and suggested that he apply for early retirement. The Appellant did so by a letter of the 6th January.

On the 25th January, at which time no action had been taken by the Board on the retirement letter, the Appellant was called before members of the Board's Investigating Committee and asked to give an explanation regarding three matters. The first concerned non-payment of copra tax in 1978 amounting to some $5,000. The Appellant was sure the tax had been paid but was denied access to Board records which would establish payment. Much later the relevant Inland Revenue receipt, which had been overlooked by the Committee, was found. The second allegation concerned a shortage of copra shipped in 1980. Again the Appellant was denied access to Board records but in the lower Court he produced detailed records of copra purchases and shipments for 1980 which showed that there was a shortage of 2% between purchases and shipments for the year. All witnesses agreed that copra loses weight through loss of moisture and that a 2% loss was well within permissable limits. (In fact the Appellant's addition is wrong and the loss for 1980 was under 1%).

The third allegation concerned the Appellant's alteration of copra bonus cards. The Trial Judge explained this matter as follows:-

> "Each grower has a card on which is recorded all copra sales by him to the Board. From time to time the Board declares a bonus to growers, which is paid in proportion to the weight of copra sold to the Board. The records do not always agree. Mr Teu said that when this happens the purchase dockets are checked against the growers' cards. Sometime information on purchase dockets has not been transferred to the growers' cards. If so, that is corrected. According to Mr Teu, after checking the cards for 1980 there was still come 18 cwts not accounted for. So he adjusted some cards to make it appear that these growers had sold more than they had."

The Appellants frankly admitted alterning the cards which he claimed was a common practice both in Ha'apai and Tongatapu. The Board made no loss because the total bonus fund had already been declared and the Appellant made no gain. The only result was that some growers received a larger bonus than they were entitled to. The total sum involved was $50.

It follows that of the three allegations of misconduct two had absolutely no foundation. However, following the meeting the Appellant was suspended without pay and this was confirmed by a letter of the 27th January.

The Investigating Committee continued its investigation and duly reported to the Board. After considering the report the Board resolved on the 12th May 1982 to dismiss the Appellant and others. Its is apparent from the minutes of the Board meeting of the 12th

May that allegations were made against the Appellant by the Investigating Committee which went well beyond the only three matters he was questioned on and which he was never given an opportunity to explain. The Appellant was later prosecuted by the Police but was found not guilty.

About a year after the Appellant's dismissal a Royal Commission was set up inquire into the operations of the Board at Vava'u, Ha'apai, 'Eua and Tongatapu, its members being Baron Vaea, who is a member of the Board, Mr Hurrell and a Magistrate Mrs H.M. Helu.

The Commission heard unsworn evidence from the Appellant, who gave his explanations concerning the alleged non-payment of copra tax, the copra shortage for 1980 and the bonus cards.

In its report the Commission only referred to the Appellant's actions in altering the bonus cards but then said that the other problems at Vava'u stemmed from his inadequate leadership and control. It concluded by a majority decision that his dismissal had been "fair and equitable". Mr Helu thought the decision to dismiss was too harsh and that having regard to his years of service he should have been allowed to retire.

Although the position is rather confused in this case because the Appellant was never informed of his dismissal it is clear that he remained on suspension without pay at least up to the 12th May, when he was summarily dismissed.

There are two ways in which the Board could have dispensed with the Appellant's services and the first was "termination by notice" and that does not simply mean informing the Appellant that he was dismissed, as Counsel seemed to think. It means informing the employee that at the end of a specified period his employment will cease; or he may be given payment immediately for the specified period "in lieu of notice". Either party to an employment relationship may terminate the relationship by giving proper notice, which means a reasonable period of notice depending on the circumstances, including the importance of the employee's position, his length of service and seniority. It is unnecessary for any question of misconduct to arise before there can be termination by notice.

The second form of termination is by summary dismissal, which is what occurred in the present case. The dismissal was immediate with no intervening period before it would take effect.

A summary dismissal must be justified by the employer if it is challenged. That simply means taht it must be shown to be in accordance with justice and fairness having regard for all the circumstances.

We are not concerned in this case, at least up to this point, with termination by "notice" and the question is whether the Appellant's summary dismissal was justified.

We accept, as did Martin J., that on the evidence the only possible ground for summary dismissal was the alternation to the bonus cards. Mr Hurrell seemed to take a very serious view of the matter although compared with some of the other unlawful activities going on at the expense of the Board the Appellant's actions seem pretty minor.

We believe Martin J. may have been rather harsh on the Appellant in this passage from the judgment :-

> "I have found as a fact that such alteration was not normal practice. What Mr Teu did was to falsify the Board's records to give an extra payment to persons who were not entitled to it. The amount involved does not matter. So far as his employer was

concerned, if he was prepared to falsify one record he might well falsify another. The Board could not trust him. It was a serious breach of trust. The Board was entitled to dismiss him without notice."

Having regard for the nature of the offending, with no loss to the Board and no gain to Appellant; the Appellant's long service and being on he eve of retirement, we conclude that summary dismissal was not justified.

At worst the Appellant should have been dismissed on notice and in that regard we consider three months' notice would have been reasonable as did Martin J.

130 We therefore resolve the matter on that basis.

The appeal is allowed and there will be judgment for the Appellant for $1372.54, being 13 weeks pay at $105.58 per week; together with costs both in the lower Court and on this appeal as fixed by the Registrar.

Although we do not make it part of the judgment in the Appellant's favour we recommend that the Board might reconsider the Appellant's eligibility for a retirement award.