

IN THE EMPLOYMENT RELATIONS COURT
AT LAUTOKA
APPELLATE JURISDICTION

ERCA 27 of 2019

BETWEEN : RAJENDRA PRASAD FOODTOWN
APPLICANT

AND : NATIONAL UNION OF WORKERS
RESPONDENT

BEFORE : M. Javed Mansoor, J

APPEARANCES : Ms. M. Vanua for Applicant
Ms. M. Vatege for Respondent

Date of Hearing : 24 February 2022

Date of Judgment : 30 November 2023

JUDGMENT

EMPLOYMENT

Deduction of trade union subscription

1. This is an appeal against the decision of the Employment Relations Tribunal delivered on 26 September 2019. The issue concerns the deduction of union subscriptions by the employer and its remittance to the union at the request of the workers. The respondent sought an order from the tribunal to deduct and remit union subscriptions from the salaries of workers who consented to the deductions.
2. The tribunal considered the applicable provisions and ordered the appellant to deduct union subscription fees and remit the sums to the trade union.
3. The appellant's grounds of appeal are stated below:
 - (1) "The learned Tribunal erred in law when it failed to consider the fact that section 47 is a general provision and does not limit itself to Trade Union subscriptions.
 - (2) The learned Tribunal erred in law and in fact when it did not consider that to allow employees to demand other deductions would open a flood gate whereby employees will burden employers to demand other deductions.
 - (3) The learned Tribunal erred in law in coming to the conclusion it had by assuming a contract existed between the employee and the employer to deduct the subscription when there was no acceptance or agreement by the Appellant to consent to the deduction.
 - (4) The learned Tribunal erred in law when it failed to consider the fact that the Appellant does not have any deductions for any employees apart from those mandated by law and therefore there was no issue of discrimination.

(5) The Tribunal failed to give appropriate and/or proper weight and/or any consideration to:-

(i) The Appellants submissions;

(ii) The cases submitted by the Appellant which addressed the use of the word "may" to be discretionary; and

(iii) The fact that there were no submissions by the Respondent and thus no compelling arguments advanced by the Respondent against the Appellant's submissions.

(6) The learned Tribunal was in breach of natural justice when it failed to give the Appellant the opportunity to respond to the Indian Supreme Court decisions it had relied on in coming to its decision, when those cases were not raised by either party."

4. The appellant contends that section 47 of Employment Relations Act is a general provision which allows the employer to make deductions from a worker's salary and remit these sums. It says, however, that the provision is not mandatory, and that this is made clear by the use of the term, "may". The appellant submitted that on the contrary, section 163 of the Act was mandatory where a collective agreement existed.

5. Section 47 of the Act states:

"(1) An employer may-

(a) Deduct from the wages of a worker an amount due by the worker in respect of any tax or deduction imposed by law or ordered by a court;

(b) With the written consent of the worker, deduct an amount due by the worker as a contribution to a provident fund, school fund, pension fund, sports fund, superannuation scheme, life insurance or medical scheme, credit union, trade union, co-operative society or other funds or schemes of which the worker is a member and must on behalf of the worker pay the amount so deducted to the person empowered to collect amount or

entrusted with the management of the fund, scheme, trade union or cooperative society”

6. The Appellant referred to provisions of the Fiji National Provident Fund Act 2011, and section 37 (1) of the Tax Administration Act. It was submitted that these statutes provide for the compulsory deduction and remittance of those deductions. Failure to do so will result in the imposition of penalties. Section 163 of the Act states:

“(1) A collective agreement is to be treated as if it contains a provision that requires an employer that is a party to the agreement to deduct, with the consent of a union member, the member’s union fee from the member’s salary or wages on a regular basis during the year.

(2)

(3) Union fees deducted from a member’s salary or wages must be paid to the union concerned in a manner agreed to by the union.”

7. The appellant submitted that if section 47 (1) (b) is considered mandatory, it would open the floodgates and the employer would be required to make various deductions. The appellant submitted that there will be a financial burden on the employer due to additional bank fees, software charges and extra clerks to meet the administrative requirements. The appellant says that it has more than five hundred employees.

8. The appellant submitted that though the employees consented to the deduction of union fees, there was no agreement between the employer and individual workers for the deduction and remittance of trade union subscriptions.

9. The appellant submitted that although the employees have consented to the deduction, it is for the employer to decide whether or not to deduct union subscription from their salaries.

10. The respondent submitted that the word “may” has to be interpreted as having a mandatory effect, and said that there is no evidence to substantiate the claim that a deduction of union subscriptions would be a burden to the employer.
11. The issue in this case is whether the tribunal was justified in directing the employer to deduct trade union subscriptions and remit these to the union. The tribunal has construed the applicable provisions in light of the factual context in deciding to order the employer to make deductions of the subscription fees and remit the sums to the union. Interference with the resident magistrate’s decision is not warranted in the circumstances of the case.

ORDER

- A. The appeal is dismissed.
- B. The appellant is to pay the respondent costs summarily assessed in the sum of \$1,000.00 within 21 days.

Delivered at **Suva** on this **29th** day of **November, 2023**.



M. Javed Mansoor
Judge