

PARTIES: Peter Julian Hansen and Northern Land Council

TITLE OF COURT: In the Supreme Court of the Northern Territory of Australia

JURISDICTION: Interlocutory Application

FILE NO.: 143 of 1993

DELIVERED: 3 August 1995

REASONS OF: Master Coulehan

CATCHWORDS:

MASTER AND SERVANT - dismissal of employee -
duty of employer to act fairly and reasonably -
whether such a duty is arguable

PRACTISE - Northern Territory - Supreme Court
Rules - application to amend statement of claim
- failure to plead material facts - Order 13.02
- whether deficiency overcome by provision of
particulars

Cases followed:

Marlborough Harbour Board v Goulden
(1985) 2 NZLR 378
Paul v Mobil Oil NZ (1992) 3 NZLR 194

Cases referred to:

Beach Petroleum NL v Johnson (1991) 105 ALR 456
Byrne v Australian Airlines 120 ALR 274

Representation:

Counsel:

Plaintiff	Mr Barr
Defendant	Mr Young

Solicitors:

Plaintiff	Mildrens
Defendant	Northern Land Council

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA

143 of 1993

BETWEEN:

PETER JULIAN HANSEN

Plaintiff

and

NORTHERN LAND COUNCIL

Defendant

MASTER COULEHAN: REASONS FOR DECISION

(Delivered 3 August 1995)

The plaintiff claims remedies for an alleged breach of contract of employment arising out of his dismissal. He has applied to amend his statement of claim to plead, inter alia, a breach by the defendant of a duty to treat him fairly and reasonably.

The relevant paragraph, to which the defendant objects, reads as follows:-

"14. Further, and in the alternative, the Defendant owed to the Plaintiff a duty which arose because of the existence of the employment relationship to treat the Plaintiff fairly and reasonably in all dealings with the Plaintiff. The Defendant was in breach of the said duty by unfairly and/or unreasonably terminating the employment of the Plaintiff."

In support of this allegation counsel for the plaintiff referred to a statement made by Cooke J in Marlborough Harbour Board v Goulden (1985) 2 NZLR 378 at p383 that "...we think that the position has probably been reached in New Zealand where there are few, if any, relationships of employment, public or private, to which the requirements of fairness have no application whatever. Very clear statutory or contractual language would be necessary to exclude this elementary duty ..."

(See also Byrne v Australian Airlines 120 ALR 274, 286 and 335).

However, it was suggested by Fisher J in Paul v Mobil Oil NZ (1992) 3 NZLR 194 at page 203 that "...the elements of natural justice probably now apply in the sphere of private contracts but as I understand it the foundation for importing those elements would still have to be found in a term drawn from legislation or the express or implied terms of the contract itself..."

The plaintiff has provided particulars of the allegation as follows:-

"The duty alleged arose from the contract of employment and the relationship of employer and employee thereby created. That such duty was owed was an implied term of the contract of employment. The implication arises from the fact that the defendant is/was a statutory corporation with statutory power to employ staff for or in connection with the performance of its statutory function, with the consequent expectation as to fair and reasonable treatment of staff, inter alia, so as to not misuse the relevant statutory power or so as not to sue it unfairly or unreasonably."

Presumably the reference to "sue" in the last line was intended to read "use".

While it is arguable that in some circumstances an employer may have a duty to act fairly and reasonably I consider that the pleading, read with the particulars, is unsatisfactory.

It is not clear whether the plaintiff relies upon a duty arising from the relationship of employer and employee or from an implied term of the contract. Nor is it clear as to what, if any, provisions of the Act the plaintiff relies upon in support of the implication.

The difficulty may not have arisen if all the material facts upon which the plaintiff relies had been pleaded in the statement of claim (see 0.13.02). This is not a case where the deficiency has been overcome by the provision of particulars, as suggested in **Beach Petroleum NL v Johnson** (1991) 105 ALR 456, 466.

Leave to amend in the terms of paragraph 14 of the proposed amended statement of claim is refused.

The application is adjourned to enable the plaintiff to consider further amendments, if so advised.