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IN THE APPEAL COURT OF TONGA
NUKU'ALOFA REGISTRY.

NO.14/1994.

BETWEEN : VEIMAU LEONE - Plaintiff

A N D : KINGDOM OF TONGA - Defendant.

Coram : Morling J
: Burchett J
: Tompkins J

Mr. Edwards : for the Plaintiff
Mrs. Taumoepeau: for the Defendant.

Date of Hearing : 22 February 1995.
Date of Judgment: 22 February 1995.

J U D G M E N T

MR. JUSTICE BURCHETT (delivering the first judgment at the invitation of the presiding judge)

This is an appeal against an order made by the Chief Justice upon an application to strike out a Statement of Claim. The Statement of Claim purported to support a claim for judicial review of a decision of a police disciplinary tribunal.

Rec'd
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His Honour the Chief Justice took the view that the claims made were not claims which could lead to review, but amounted to an attempt to appeal on the merits against the decision of the tribunal. It seems to me that that conclusion is clearly correct. Under the Act there was indeed a right of appeal on the merits, but it was not a right of appeal to the Supreme Court.

However counsel for the Appellant now says that there was a denial of natural justice, because no reasons were given by the tribunal. But this point, it is clear from the reasons of the learned Chief Justice, was not put at the hearing below. What was said, and what was pleaded in the Statement of Claim, was that there was an inconsistency in the reasons of the tribunal.

In my opinion there was plainly in fact no such inconsistency. What was alleged to be an inconsistency was the finding of guilt on one count, while at the same time two other counts were dismissed. But all three counts arose from the same fundamental allegation of malingering, and it was entirely appropriate not to record three separate convictions for what was in substance the one offence.

There is simply no evidence on which it could be concluded that reasons were not in fact given, and the point was not previously suggested, although quite detailed evidence was put before the Chief Justice. Had the point been relied upon, I have no doubt that an affidavit would have been filed making the assertion that no reasons were given. On what was suggested before His Honour it is not now disputed that the decision he reached was inevitable.

In those circumstances I would dismiss the appeal with costs.

MR. JUSTICE TOMPKINS.

I agree that the appeal should be dismissed for the reasons that have been stated by Mr. Justice Burchett. I should perhaps recall that Mr. Edwards acknowledged that, although he said paragraphs 1 to 17 of the Statement of Claim should remain, all the remaining paragraphs of the Statement of Claim did not disclose grounds for judicial review, save the general paragraph 25.

At the hearing of the appeal all that remained was the cause of action or at least the grounds of review set out in paragraphs 16 and 17. For the reasons that have been expressed I am satisfied that those did not provide any proper grounds for an application for review, so the proceedings were correctly struck out.

The Appellant is left to his remedy of appeal under Section 49 of the Act. Although I note that any notice of appeal to the Prime Minister must be given within 21 days, the Prime Minister has power to extend the time for lodging the appeal. Whether that time should be extended, if an application were made, would of course be a matter for the Prime Minister.

MR. JUSTICE MORLING.

I agree with what my brothers have said, and the order of the Court is that the appeal is dismissed with costs.



Morling
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J. B. Bingham
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Thomson
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