



Decision

Title of Matter:	Josifini Lagi v Nadi Town Council	(Grievor) (Employer)
Section:	Section 211(1)(a) Employment Relations Promulgation	
Subject:	Adjudication of Employment Grievance (Unjustifiable or Unfair Dismissal)	
Matter Number(s):	ERT Grievance 173 of 2016	
Appearances:	Mr R Singh, Fiji Local Government Officers Association (FLGOA), for the Worker Mr A Singh, Anil J Singh Lawyers, for the Employer	
Dates of Hearing:	Tuesday 17 January 2017 Wednesday 18 January 2017	
Before:	Mr Andrew J See, Resident Magistrate	
Date of Decision:	27 March 2017.	

KEYWORDS: Unjustifiably or unfairly dismissed; Summary dismissal; Accepting money by usage of interim receipt; Falsifying of attendance register; Mishandling of foreign coins; Use of Council Motor Vehicle for personal gain.

CASES CITED:

Parvinesh Kumar v Nanuku Auberge Resort Fiji [2017] FJET 2
Yanuca Island Limited trading as Shangri Law Fiji Resort and Spa v Vani Vatuinaruku [2017] FJHC92;
ERCA 9 of 2014

Background

1. This is a referral made to the Tribunal in accordance with Section 194(5) of the *Employment Relations Promulgation* 2007. The referred matter relates to a grievance lodged by Ms Josifini Lagi on 3 October 2016, in which it is claimed that she was unjustifiably and/or unfairly dismissed in her employment as the Senior Enforcement Officer, Finance Department, Nadi Town Council. The dismissal of the Grievor comes about following an investigation undertaken by her employer into four separate allegations of misconduct. Specifically:-

- Accepting money by usage of interim receipts;
 - Falsifying attendance register;
 - Mishandling of foreign coins; and
 - Usage of Council vehicle for personal gains.
2. At the conclusion of the investigation, the Employer deemed the Grievor guilty of all four conduct breaches and summarily terminated her from employment, effective 28 September 2016. It is against that dismissal decision that the Grievor brought her grievance to the Mediation Service.

The Case of the Employer

Evidence of Ms Anita Vanua

3. The first witness to give evidence on behalf of the Respondent Employer was Ms Anita Vanua, who was the Manager Finance and the direct supervisor of the Grievor. Ms Vanua was the Chairperson of a Panel that conducted an investigation into various allegations of misconduct and compiled an Investigation Report (See Exhibit E3) that ultimately assisted the Acting Special Administrator in reaching a decision to terminate the Employee. During the giving of her evidence, Ms Vanua provided an insight into the initial concerns that she had as to the honesty of the Grievor, following receiving various complaints from members of the public alleging that Ms Lagi had misappropriated monies in the form of foreign coins, collected by the Enforcement Section through metered 'toll' parking.¹ Those initial concerns gave rise to the commencement of an auditing of the Enforcement Section, though as it transpired, that activity was halted at the request of the Acting Special Administrator, after having received representations made to him from the Grievor, while he was overseas. Ms Vanua told the Tribunal that as part of that initial audit, that she had undertaken a review of the practices associated with the issuing of 'Interim Revenue Receipts'² and was concerned with the apparent delay or failure to deposit those monies with a Council Cashier at the next available opportunity. According to the witness, when she approached the Grievor to pass over the Interim Receipt Books coinciding with the periods in question, she was told that the books had been misplaced. Though Ms Vanua told the Tribunal that these books were subsequently located in a box³ together with foreign coins. Ms Vanua told the Tribunal that there were six Interim Receipt Books⁴ found within that box.⁵

¹ The evidence has been that whether deliberately or unintentionally, persons who use the parking meters in Nadi Town, often insert overseas coins rather than Fiji currency to pay for their parking. The result of this is that the Town Council is required to work out the best method for converting those coins into Fijian currency.

² An Interim Revenue Receipt, refers to a receipt books used by Enforcement Officers in the field or when the Cashiers Section is closed. The monies collected are passed over to the Cashiers Section of Council, who ultimately record that revenue and bank those monies.

³ Referred to in proceedings as the 'Foreign Coin Box', that was described by Mr Serevi Vula as a "black wooden (former tea leaves) box with key".

⁴ Three books of which have become Exhibits in Proceedings. (Exhibit E4, Exhibit E5 and Exhibit E6).

⁵ It is noted that later in proceedings, that the Grievor claimed that only one receipt book was located within the box.

4. According to Ms Vanua, as part of her initial auditing process, she had itemised the receipts and monies not banked with the Cashier.⁶ The witness identified the receipt books that form part of her inquiry and gave examples of those that contained the signature of the Grievor for monies received, but where no later deposits were recorded by the Cashier. The next issue that was canvassed by the witness through Counsel, dealt with the question of time recording and attendance. In this regard, Ms Vanua firstly informed the Tribunal of the ordinary rostered hours that the Grievor was required to attend work and thereafter explained irregularities in the recording of times entered within the Attendance Register. It was noted by Ms Vanua, that on many occasions the Grievor had not been recording actual times worked, or the actual times that she either commenced or finished.⁷ On occasions it was said that the Grievor would have claimed to have worked on Saturdays, when she had not and on other occasions recorded time worked for lunch, though claiming that she had worked during this period and therefore adjusted the closing time accordingly.

5. In relation to the claim of misappropriation of foreign coins, the Manager Finance briefly explained to the Tribunal, the process for both how these coins were received by Council and what should be the best way of maximising the return or conversion of those coins into Fijian currency. In this regard, the witness told the Tribunal that she was alerted to malpractices by the Grievor, when it was claimed by a member of public on Facebook that Ms Lagi had a large amount of foreign coins located at her home. In relation to the use of the Council motor vehicle for personal use, Ms Vanua told the Tribunal that it would be only the Acting Special Administrator who could authorise the personal use of a Council vehicle. She said that during the course of the investigation, it was discovered that the Grievor would authorise officers to do 'personal runs' for her in the Council vehicle and that she would ask that they enter into the vehicle log book, incorrect travel entries to conceal that fact. Ms Vanua indicated that together with the other members of the Investigation Panel, they interviewed witnesses and compiled the Investigation Report for forwarding to the Acting Special Administrator. Finally, the witness gave the Tribunal a brief account of the past conduct of the Grievor, that included an earlier letter issued to her for the falsification of attendance register,⁸ and a final warning following her suspension from duties because of various issues including the unauthorised use of the Special Administrator's name within correspondence and the altering of a Nadi Town Council Pay Slip provided to Ms Lagi, in order to bolster her ostensible salary for certain third party purposes.⁹

6. Under cross examination it was put to the witness, that neither the Fiji Local Government Officer Association (the Grievor's Union) nor the Grievor had received a copy of the Investigation Report that had been prepared for the Acting Special Administrator's consideration. The witness accepted that fact, but claimed that she was not required to do that as part of her duties. Ms Vanua accepted that there was not a Standard Operating Procedure for the use of the Interim Receipt Books, though claimed the practices were part of a mutual set of understandings, requiring monies to be remitted through the Senior Enforcement Officer. Ms Vanua conceded that of the \$1700.00 (approximately) missing monies associated with the three receipt books in question, that the Grievor's signature was only on a few of those receipts. It was put to the

⁶ Refer to page 4 of the Investigation Report and note that these Receipt Books referred to, coincide with Exhibits E4, E5 and E6.

⁷ The Tribunal specifically requested that it be shown a copy of an extract of the Attendance Register and notes that at the time, that it made no provision for lunch, nor other leave periods that may have been taken in the course of a working day. (See Exhibit E 7).

⁸ See page 32 of the Investigation Report at Exhibit E3.

⁹ Ibid pages 32-39.

witness that perhaps other officers were not telling the truth and there was a shifting of blame onto the Grievor. Ms Vanua did not commit to that view.

7. In relation to the issue of the working hours and the mis-recording of time within the Time Register, the witness conceded that Enforcement Officers were required to provide a service during lunch hours and that there had been an informal arrangement in place, for officers to finish early on such occasions when they had worked through their lunch. Ms Vanua accepted that this may have been a past practice. It was put to the witness, that Council had suspended Ms Lagi from her duties while conducting their investigation, however made her utilise her annual leave in contravention of the Collective Agreement in place between the Union and Council. The witness accepted that was the case.
8. Prior to the opening of the Grievor's Case, Ms Vanua was recalled by the Tribunal to explain when there was a change of work hours in Council, altering the finishing time for employees. The answer to that question was February 2016. In addition, Ms Vanua explained how the Attendance Register operated. She explained where it was located at the Office Reception and that it was at the time, largely a self- regulated system. According to Ms Vanua at the end of the pay fortnight, the Section Heads would then prepare time sheets based on staff attendance. It was accepted that in the case of Saturday work, when the office was closed, that the employees would 'enter' those time worked, on the following Monday when the office was opened.

Evidence of Mr Serevi Vula

9. The next witness to give evidence was Mr Serevi Vula, who at the relevant time was working as a Law Enforcement Officer and sub-ordinate to the Grievor. According to Mr Vula, he was aware of the Interim Receipt Books, but did not know where Ms Lagi had kept them. In his Evidence in Chief, Mr Vula indicated that he had responded to a request from Mr Shaisas Afroz Ali the then Acting Senior Enforcement Officer to "break open" the Foreign Coin Box to assist Ms Vanua in her inquiry. It was at that stage according to the witness, that the missing receipt books were located. Mr Vula told the Tribunal that Ms Lagi was responsible for the counting and banking of foreign coins. The witness provided a brief account of occasions when the Grievor was either absent from work or had left work early and where she would not have accurately reflected those times within the Attendance Register. In relation to the misuse of the Council motor vehicle, the witness recalled one occasion when he had seen family members of the Grievor in the Council vehicle, while attending the Weights and Measures Office. In his evidence, Mr Vula gave a brief account of the processes involved in the collection and selling of foreign coins, as they were received by Council. Under cross examination, Mr Vula indicated that he had worked in the organisation since 2000 and indicated that the processes for banking of Interim Receipt monies collected, varied from officer to officer. Mr Vula explained that he held a key to the Foreign Coin Box, but only "touched the box" when instructed to by Ms Lagi. According to the witness, he had in his mind that Ms Lagi had been stealing monies. Mr Vula reinforced that there would have been several occasions on a Saturday, that Ms Lagi would not be in attendance at work, but when checking with Accounts would have still been paid for that time as if worked. He confirmed that on two occasions in two weeks that he had been at Weights and Measures when the Grievor's children had been picked up in a Council vehicle.

Evidence of Ms Salanieta Joy Taoba

10. Ms Taoba was the Enforcement Section typist who commenced her work with the Nadi Town Council in 2013. According to the witness, she was not responsible for the handling of monies as

part of her duties. Ms Taboa indicated that as part of her role, she would assist in the recording of monies receipted as part of the infringement process. The witness gave her views as to the way in which the hours of work arrangements applied in the Enforcement Section and indicated to the Tribunal that she was aware of occasions when the Grievor would ask one of the drivers to drop her to the mini bus stand at the completion of the working day. According to Ms Taboa, it was she who had provided some information in relation to the misappropriation of foreign coins to Council, on the basis that she had been made aware of that fact from a family relative. Ms Taboa told of occasions when staff were required to do the personal banking of the Grievor and also how Ms Lagi had been operating a small business at work, through the selling of Lovo and other cooked foods and 'lollipops'¹⁰. The witness indicated that Ms Lagi would bring food and sell it to staff, before lunch times. On cross examination, Ms Taboa conceded that she would go to the bank for the Grievor during her lunch time of her own will and that at no time did she think she was depositing Council monies into the private accounts of Ms Lagi.

Evidence of Mr Semi Ravouvou

11. The next witness to give evidence on behalf of the Employer was Mr Semi Ravouvou, who had worked within the Council for 13 years. Mr Ravouvou gave a brief understanding of how the Interim Receipt Books were used and indicated that he had been made aware that several of these books had gone missing. The witness provided the Tribunal with some general observations regarding the Grievor's attendances at work and indicated that on occasions he was aware when Ms Lagi would leave work early. During cross examination, the witness confirmed that he was aware that on occasions some monies that were collected as part of the Interim Receipting were held by Mr Vula. Mr Ravouvou confirmed that he never used the Interim Receipt books for the taking of monies. He said he was aware that Mr Vula also had a key to the Foreign Coins Box, although admitted never having seen him with that box.

Evidence of Mr Keni Varo

12. Mr Keni Varo had been engaged by the Nadi Town Council for 8 years. In his evidence he indicated that he was not aware of the Interim Receipt Books, however was aware that the Foreign Coins box was "always in the Boss' office".¹¹ Mr Varo's evidence was there were occasions that Ms Lagi would leave work early around 2.30pm or 3.30pm and sometimes 4.30pm when she had not taken lunch. Mr Varo confirmed that the Grievor had called him while in his transport and asked that he drive her to the Mini-Bus Stand during working hours. The witness was asked by Counsel, "What did you write in your log books?" and he said 'Attending Complaints and Serving Warrants'. Mr Varo said that he made these false entries under instruction and felt that he was working in an environment where he was 'under threat' of the Grievor. Mr Varo confirmed that on occasions that the Grievor would drive with him to Lautoka when he was serving warrants, for personal reasons and can recall on one occasion picking up a personal parcel for Ms Lagi from the Nadi Airport, whilst in the Council vehicle. On another occasion, the witness told the Tribunal that he had picked up a tent and mats for Ms Lagi and dropped it off at (her) home. Under cross examination, Mr Varo moderated the fact that he was not so much feeling under threat by Ms Lagi, but that he was "to be on (his) toes". Despite the challenge made to his evidence by Counsel in relation to being made to enter false records in the Motor Vehicle Log Book, Mr Varo maintained his position. He said, "I had to do what she said".

¹⁰ An item commonly associated with the consumption of Yaqona.

¹¹ The reference here being to Ms Lagi.

Evidence of Mr Samisoni Nakuve

13. Mr Nakuve had been working at the Nadi Town Council for 12 years and within that time had been engaged in the Enforcement Section. According to the witness, he was present when the missing receipt books were located within the Foreign Coins Box. According to the witness, Ms Lagi had told him to put foreign coins in the box and he had seen the receipt books inside that box. According to Mr Nakwe, he had told the Grievor that the receipt books were inside the box. Under cross examination, the witness conceded to having a good relationship with the Grievor. Mr Nakwe, said he was aware that the Grievor would on occasions leave work early, however he was also aware there would be occasions where she would work through her lunch.

Evidence of Mr Laisiasa Biu

14. Mr Biu had been working at Nadi Town Council for 4 years. His evidence also confirmed the fact that Ms Lagi did not always work the ordinary minimum work hours. Mr Biu indicated that he was be asked to bank money on behalf of the Grievor, but said that it was coins, not notes. According to the witness he said that he would do that activity twice a week. Mr Biu said that before the Bula Festival in 2015, that he had made a large bank deposit into an account for the Grievor, which he estimated to be more than \$5000.00 FJ. Under cross examination, Mr Biu said that he did object to undertaking the personal banking for Ms Lagi but agreed to do it on the basis that she was his boss. Mr Biu told the Tribunal that in relation to the counting of foreign coins, that he did not believe that they were all those that had been collected from parking meters. The witness stated, that he had told several of the staff that Ms Lagi had been converting foreign coins, but was told to wait for the interview with Investigation Officers, before telling them that information. Under questioning from the Tribunal, the witness stated that when the Auditor arrived in the Enforcement Office to undertake some investigations, that the Grievor had placed a file over a plastic bag of \$1 coins. He said that this was not money from parking meters. Mr Biu stated that he went outside and when he returned, the money was gone.

Evidence of Mr Shaisas Afroz Ali

15. Since the suspension and then termination of the Grievor, Mr Ali has been acting in the position of Senior Enforcement Officer. In relation to the misuse of the Council motor vehicle, Mr Ali indicated that he had driven the Grievor at her request to netball and that she had gone with him to Lautoka, when he was serving warrants or visiting the Land Transport Authority. Mr Ali said that he conducted banking on her behalf on two occasions. According to the witness, Ms Lagi had asked him to locate the missing receipt books, but he did not look for them in the Foreign Coins Box. According to Mr Ali, on most Saturdays the Grievor would not attend work. He claimed that the process of banking Interim Receipt monies, was that he would either collect the money and pass over to Ms Lagi or that if she had gone home, then hold it and either he or she would deposit the monies the following morning. During cross examination, Mr Ali indicated that he had a lot of respect for the Grievor. Mr Ali indicated that the practice of workers being 'dropped off' in the Council vehicle was a long standing one.

Evidence of Mr Sekope Lesubula

16. Mr Lesubula had worked at the Nadi Council for approximately six years. It was he who had discovered the Interim Receipt Books missing and informed the Tribunal that the Grievor had advised him that the books went missing during renovations. The witness was of the impression that during the netball season, that the Grievor did not turn up to work on Saturdays. Ms Lesubula also admitted to having had undertaken the personal banking for Ms Lagi, that he says meant banking into her account, or that of her sons or daughters. He said that he would undertake banking duties such as this, perhaps three days a week, from time to time.

Evidence of Mr Robin Ali

17. Mr Robin Ali is the Acting Special Administrator, Nadi Town Council. He was appointed to that role by the then Acting Minister for Local Government in June 2013. Mr Ali told the Tribunal that he was travelling overseas in 2013, when he received a phone call from the Grievor complaining that an internal audit had been carried out in relation to various management practices within the Enforcement Section. At that time, Mr Ali had agreed to place a temporary hold on the inquiry, so he could understand the nature of the complaint being raised by Ms Lagi. Upon the Acting Special Administrator's return, he said that the internal audit recommenced. Mr Ali said that the Manager Finance had pointed out some anomalies and he decided in turn to appoint a Committee to investigate the issues further. Mr Ali acknowledged that he was provided with an Investigation Report from the Chairperson of that Committee and came to the conclusion, that there were serious issues raised. The witness told the Tribunal, that following consideration of the issues and taking advice from several Ministries, that it was determined that the Grievor should be terminated in her employment and that the matter should be referred to the Fiji Independent Commission Against Corruption.¹²
18. Under cross examination, the Acting Special Administrator provided some further insight into the way in which the initial audit process was halted, the subsequent appointment of the Investigation Committee and the conclusions reached in relation to the general allegation that there had been an Abuse of Office by the Grievor. It was put to the Acting Special Administrator that he had not followed the terms of the prevailing Collective Agreement in relation to the way in which the process for investigation and termination should be undertaken. In response to that, Mr Ali stated that he believed that the Collective Agreement was null and void.¹³ It was put by Mr Singh from the FLGOA that there had been other precedents by which cases of inappropriate use or spending of Council resources warranted a repayment arrangement to be made by the employee concerned and that termination was not a consideration or appears to have been seen to be too harsh an outcome on those occasions.¹⁴ When asked as to what would have been the fate of the Grievor had the Interim Receipt Books not been found, Mr Ali was unable to speculate.

¹² The witness was also referred to Exhibit E1 (the termination letter) and Exhibit E2 (correspondence from Ministry of Local Government, Housing and Environment recommending the termination of the Grievor)

¹³ The Tribunal notes the submissions of the Grievor in relation to this issue, particularly insofar as it is alleged that a worker on suspension should have been entitled to receive half pay and not be required to take annual leave for the absence.

¹⁴ See for example FLGO19.

Evidence of Ms Ana Sikuri

19. Ms Ana Sikuri is employed as a Receptionist with the Nadi Town Council. In her role, she reports directly to the Manager Finance and told the Tribunal that she has known the Grievor for four years. Ms Sikuri gave evidence that she was approached by Ms Lagi when she was going to take holidays to the United Kingdom and asked if she could take foreign coins with her to have converted. Ms Sikuri told the Tribunal that she refused to do so. According to the witness, Ms Lagi would often send people to see her and access bank deposit slips which she held. Under cross examination, the witness was unable to clarify for the Tribunal whether the foreign coins that Ms Lagi asked her to take overseas, were those of the Grievor or Council coins that needed to be converted.

The Case of the Grievor

20. Mr Singh opened the case on behalf of the Grievor, by indicating that Ms Lagi had been sent on indefinite leave by the Council, in order that an investigation into her conduct could take place. It was submitted that the Union had provided submissions to Council and referred the Tribunal to a relevant extract setting out what it says was the disciplinary procedures arising out of the Collective Agreement between the Union Association and Council that it says were in place and not followed,¹⁵ as well as an extract of Section 132 from the *Local Government Act* (Cap 125)¹⁶ where it says the statutory requirement for surcharge in the case of recovery of funds, is set out. It is worth noting that the Association takes issue to the fact that it had not received any response to its communications with the Council, in relation to what it believes should be the appropriate way in which any investigation process should have taken place.¹⁷

Evidence of Ms Josifini Lagi

21. Ms Josifini Lagi commenced work at the Nadi Town Council in 1992. She initially started her work in Council as a receptionist typist, when in 2010 she secured a position within the Enforcement Section. In 2012, the Grievor was appointed to the role of Senior Enforcement Officer. According to the witness, it was not until October 2015, that he had heard rumours that the Manager Finance had wanted to undertake an investigation into various activities. Ms Lagi told the Tribunal that this coincided with a period of time in which she had been on annual leave. She said she had received an email asking her where the missing Interim Receipt Books were and that she had responded indicating that she did not know. According to the witness she had been on two weeks annual leave in New Zealand and upon her return was told that she should take 30 days leave. Ms Lagi says that she was caught by surprise in relation to the nature and scope of the issues canvassed. She said that when called for the interview that she was away in the United States and had requested that the Union represent her. Ms Lagi said that she had never seen the 70 page report and claimed that the investigation took 10 months.

¹⁵ See FLGOA17 within the Submissions for Josifini Lagi.

¹⁶ See FLGOA18 within the Submissions for Josifini Lagi.

¹⁷ The Union was entitled to a timely response in relation to this issue and should have been provided one.

22. In relation to the Interim Receipt Books, Ms Lagi said that all employees within her section were authorised to use these books. She added that it was not her responsibility to go to the cashier on behalf of others once they issued receipts, though sometimes indicated that she did do that. By way of example the Grievor was taken to the document identified as "Annexure FLGOA 8" where the table of calculations pertaining to the missing receipt monies was located.¹⁸ Ms Lagi told the Tribunal that the system of issuing Interim Receipts ceased in 2013. When asked by Mr Singh for the Association how the receipt books were found, Ms Lagi replied,

On the last day of work before I handed over, I asked Samisoni for the Foreign Coin Box..he found the receipt books... (I told him to) put it back in box that we will work on that

23. The witness conceded that she did advise the Manager Finance that the books had been missing, although indicated that the office renovations had taken place well before she had gone on leave. Ms Lagi told the Tribunal that she would work through most of her lunch hours. The witness told the Tribunal that the Main Office would be closed at 4.30pm, which meant she would often have to enter time records the next morning. Ms Lagi denied that she was not at work on most Saturdays. According to Ms Lagi, she had never previously been cautioned about her hours of work and attendance. In relation to the issue pertaining to the misappropriation of foreign coins, Ms Lagi denied any wrong doing. She said that the approach she had made to Ms Sukuri had been misinterpreted. The witness told the Tribunal that there was no procedure in place for the way in which foreign monies were to be processed. According to the witness, miscellaneous coins were previously sold at \$30 per bucket and that the former Manager Finance had been aware of such practice. The Grievor also admitted to having done "personal business during office runs". Again she iterated that there were no procedures provided. She said that sometimes when the allocated drivers were in the field, she may have requested some assistance, but that she never did special runs for herself and said it would be only if it was on the way. Ms Lagi emphasised that it was the drivers that maintained the log records for the vehicles and that she had no influence in relation to the entries made by them. Ms Lagi conceded that she may have asked to be driven to the Mini Bus Stand if it was raining, however would only do so if they were near the building and that she did not distract them from their work. The witness denied ever having parcels or packages collected on her behalf and never instructed drivers to enter incorrect records associated with vehicle usage, despite that she may have requested to travel somewhere on one of these occasions. Mr Singh then asked the Grievor to provide the Tribunal with some understanding as to the allegation that she had been selling foods at work. Ms Lagi admitted to this and said that she did this to support her children attend University. Ms Lagi said that she normally brought food to sell in the mornings and there was never any complaints made by the Council as far as she was aware.
24. During cross examination Ms Lagi was referred by Counsel to a series of email communications between herself and the Manager Finance¹⁹ in which a new protocol for the collecting and counting of parking meter coins was being sought to be introduced. Ms Lagi told the Tribunal that the collection of these monies could not take place in the time frame suggested by the Manager, as the collection could not be done before 4.00pm. Mr Singh put to the Grievor, that this was an illustration of her defying the authority of her Manager; a proposition that was not accepted by the Grievor. Counsel for the Employer questioned Ms Lagi as to why she had not immediately notified the Manager Finance upon discovering that the missing receipt books were located within the Foreign Coins Box, prior to her going on leave. The Grievor responded, "no

¹⁸ The witness was shown Receipt No 11585 made out in the sum of \$70.00. This amount was identified within that Table, although according to Ms Lagi the signature on that receipt document was not hers.

¹⁹ See Exhibit E 3 at pages 8 to 12.

one was looking for it then".²⁰ Counsel also referred the witness to the signed response that she provided the Council, particularly pertaining to the process for the depositing of monies.²¹ Ms Lagi told the Tribunal that she didn't accept that document as being an accurate account of what she had said and that it did not contain her initials on each page, an issue upon re-examination that she reiterated.

25. In relation to the issue of foreign coins, the witness agreed that on occasions she would buy the coins, but said that she did not hold any receipts for these purchases. In relation to the allegations that she had misused her position by accessing the motor vehicle for her own purposes, she denied that suggestion and said that she never sought any special use of the vehicle.²² Ms Lagi told the Tribunal that she could not recall going to the airport to collect any parcels in a Council vehicle. Finally in relation to the allegations of abusing office, by having employees undertake her personal banking, the witness said,

I may have sent them .. can't recall how many times.. 1 in a week....I was following what was practised in Council.. I thought it was normal.

Overall Impression of the Evidence

26. In the case before the Tribunal, it is alleged that the dismissal is neither justified nor fair. In relation to the question of what constitutes a 'justifiable dismissal', this Tribunal has recently provided a brief analysis of the history of that concept, within the decision, *Parvinesh Kumar v Nanuku Auberge Resort Fiji*²³. In the case of what constitutes an unfair dismissal, a clear prescription is provided for by her Honour Wati J in the case of *Yanuca Island Limited trading as Shangri Law Fiji Resort and Spa v Vani Vatuinaruku*²⁴
27. In relation to the first issue. The question really is this; based on the information that that the Employer had before it at the time of dismissal, was it justified in taking the action that it did? Firstly, there were missing monies and very poor practices that had been adopted by the Enforcement Section in the banking of monies collected. While the Tribunal is of the view that it is likely that more than one person had been involved in the misappropriation of these funds, it remains the case that the Grievor was the person in charge of that section and appears to have assumed little, if any, responsibility for the overall undertaking to ensure monies once collected, were banked on behalf of that Section. The Grievor's account of the missing Interim Receipt Books and her lackadaisical, almost dismissive response to when it was located, casts doubt on her own honesty and integrity. In relation to the foreign coins, again the protocol should be quite simple. These were still monies that had value. Whatever the best method of achieving something for their conversion²³ would have been, that system should have been instituted. Again these were Council monies. Employees should not be purchasing these monies for resale, unless such transaction took place by way of an 'arms length' arrangement. The Grievor admitted to

²⁰ It should be noted here, that the Grievor contends that only 1 receipt book was located within that box.

²¹ Refer to Exhibit E3 and Folio 56.

²² The inference here being to the fact that she claimed that if the vehicle was going in a particular direction, for example, that she would be able to utilize it for her own purposes, without being seen to be a misuse.

²³ [2017] FJET 2

²⁴ [2017]FJHC92; ERCA 9 of 2014.

having acquired some coins, though did not give an adequate explanation as to how such system was controlled. The practice was obviously not properly monitored and subject to exploitation by employees. The Attendance Register and allegations pertaining to the Grievor's absences from work, in some respects came about more as a result of the anecdotal evidence provided, rather than any clearly defined demonstration of the breaches. Having said that, the evidence of all of the employees was overwhelming, insofar as they all recounted how Ms Lagi would leave work early and how she often did not work on Saturdays. The Grievor admits selling foodstuffs at work that included Lovo, Homemade Lollipops and according to one employee, Yaqona. Clearly these activities impacted on the working hours of Ms Lagi. Finally, in relation to the requests made to have staff bank monies and to have drivers run errands or provide her with personal transport, these are again issues that appear well substantiated by the evidence. All of which has been considered by the Tribunal.

28. The issue pertaining to the unreconciled depositing of monies from the Interim Receipt Books and the fact that several of the books went missing for some time, all create a scenario that is entirely inappropriate for a public sector organisation. Clearly the Grievor lacked any comprehension as to the importance of her role and the obligations that she had to the ratepayers of Nadi. That is, to act honestly, competently and professionally at all times. The response to Counsel for the Employer by the Grievor, when she admits to having ultimately discovered that at least one of these missing receipt books had been located, summarises her general approach to things when she said, "no-one was looking for it then".
29. For a large period of time in which the Grievor held the position of Senior Enforcement Officer, she was clearly allowed to develop many of these practices, unhindered and without appropriate supervision. The Tribunal has the strong impression that Ms Lagi simply did not have the requisite skills to undertake the responsibilities associated with the role. That being said, what she did thereafter was to exploit and take advantage of her position for her own benefit. Having employees undertake her personal banking, particularly to the extent of the number of times that it is reported, is totally unacceptable and an abuse of power as a public sector employee. While some of the evidence pertaining to the usage of the motor vehicle sounds rational in itself that is not the point. These are Council vehicles to be used for Council purposes. That is the expectation that ratepayers have of their Council. Again it would seem that there may have been some previous past practices that created a culture where some of this may have been regarded as acceptable. The case of selling of foodstuffs at work, is a similar case in point. Supervisors and Managers of staff should be focussed on the core business of the Employer. The Grievor seems to have taken further advantage of her role in justifying this activity. It clearly was a practice that would have some impact on Ms Lagi in her daily work and is something that a person at her level should have known would not be acceptable. It is this lack of judgement that seems to have been the prevailing theme that arises out of all of the evidence provided. In the circumstances and having regard to the fact that the Grievor had been previously formally warned about her conduct as an employee, the Tribunal is of the strong belief that the dismissal of Ms Lagi was justified.
30. The question of whether the dismissal was fair in my mind is quite clear. Even if there has been some non-compliance with the prevailing expectations of the Union Association, that does not necessarily render the dismissal unfair from a statutory point of view. If there was a prevailing Collective Agreement in place, that allowed for the suspension of an employee on half pay, as opposed to requiring that person to compulsorily take annual leave, then that issue could still be looked at in the context of the rights of an individual under contract or statute. But that isn't the primary issue before the Tribunal. The issues is whether in carrying out the dismissal, the

Employer acted in a manner that was harsh, aggressive, humiliating, degrading, embarrassing, or in a manner that otherwise causes humiliation, bad repute and injury to the feelings of the worker.²⁵ There is simply no evidence of this whatsoever. The Investigation into the Grievor's conduct is a logical consequence of a series of issues and practices that ultimately were no longer sustainable. The question of previous ways in which Council may have dealt with issues of the repayment of monies by other Employees, is also not that relevant to the question before the Tribunal. That question is one of ascertaining whether having regard to all relevant facts and factors that the dismissal of the Grievor is both justified and fair. The Tribunal believes that the Employer has adequately discharged its burden of proof in this regard.

Should the Employee Be Summarily Terminated?

31. Section 33(1) of the *Employment Relations Promulgation 2007* provides:

No employer may dismiss a worker without notice except in the following circumstances-

- (a) where a worker is guilty of gross misconduct;*
- (b) for wilful disobedience to lawful orders given by the employer;*
- (c) for lack of skill or qualification which the worker expressly or by implication warrants to possess;*
- (d) for habitual or substantial neglect of the worker's duties; or*
- (e) for continual or habitual absence from work without the permission of the employer and without other reasonable excuse.*

32. The accumulation of issues that have been levelled against the Grievor and her inability to justify such conduct, would amount to gross misconduct. The failure to put into place, appropriate financial and administrative controls pertaining to the Enforcement Section, the failure to exercise less than an arm's length dealing with the purchase of foreign coins from Council; the misuse of Council Officers for personal errands such as banking and collecting of parcels and the operating of a small business on Council premises during operating hours all contribute to such a view.

Conclusions

33. While the Tribunal notes that there are some contentions made by the FLGOA, pertaining to the non-observance of a Collective Agreement that remains in place between the parties, these issues do not form a major plank of the Grievor's case. The process adopted giving rise to the termination, appears to have been a fair one. The Tribunal is of the view that there is little benefit now in revisiting any process that is claimed to have been the preferred or mandatory one that should have been followed. The time for the intervention of the Tribunal would have been more appropriately coinciding with the alleged breach of the Collective Agreement. The question as to whether or not the Collective Agreement is in force and who it does apply to, does nonetheless need to be resolved. There is simply insufficient information before the Tribunal to provide any meaningful commentary in this regard. In any event, at the end of the day, an Investigation Committee was formed and a report provided to the Acting Special Administrator. Ms Lagi had input into that process. She was interviewed and so were her staff.

²⁵ See *Yanuca Island Limited trading as Shangri Law Fiji Resort and Spa v Vani Vatuinaruku* [2017] FJHC92 at [61].

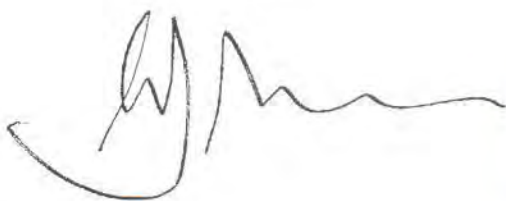
The findings of that report were provided to the FLGOA who represented the Grievor in her absence.

34. While it is also noted within the submissions of the FLGOA, that in the case of the Employee's previous adverse reports, that these should only be considered within a window of 24 months,²⁶ there is no clear evidence that they have in fact been relied up on by the Council, even if it was the case that the Investigation Committee had seen fit, rightly or wrongly to include such breaches within the report document. The Tribunal is somewhat surprised, given the nature of those previous misdemeanours, that the employment of the Grievor had continued as long as it did.

Decision

35. It is the decision of this Tribunal that the grievance of Ms Josifini Lagi, against the Nadi Town Council, should be dismissed.

The Tribunal orders accordingly.



Mr Andrew J See
Resident Magistrate



²⁶ See Article 18 (e) within the extract provided at Annexure FLGOA 17.