

IN THE STATUTORY TRIBUNAL, FIJI ISLANDS
SITTING AS THE EMPLOYMENT RELATIONS TRIBUNAL



Decision

Title of Matter: Hans Leger (Grievor)
v
Fiji Sugar Corporation (Employer)

Section: Section 211(1)(a) *Employment Relations Act 2007*

Subject: Adjudication of Employment Grievance

Matter Number: ERT Grievance No 216 of 2017

Appearances: Mr D Nair, Legal Representative for the Grievor
Mr N Tofinga, Fiji Commerce & Employer's Federation, for the Employer

Date of Hearing: 13 March 2018

Before: Mr Andrew J See, Resident Magistrate

Date of Decision: 12 June 2018

KEYWORDS: Employment Relations Act 2007; Summary Dismissal of a Work; Section 33 Gross Misconduct; Unjustifiable Dismissal

Background

[1] The Grievor filed his grievance with the Mediation Service on or around 13 September 2017, following his dismissal in employment on 28 July 2017. The dismissal letter of that same date provides the reason for dismissal being, as a result of gross misconduct for failing to adhere to the standard procedures/guidelines in administering the 2016 Cane Planting Grant. This matter was initially dealt with in mediation before an appointed mediator, before being referred to the Tribunal in accordance with Section 194(5) of the *Employment Relations Act 2007*.

The Grievor and His Employment

[2] The Grievor commenced his employment with the Employer in 1994 as a weighbridge attendant. In 2011, he was appointed to the position Field Co-ordinator¹. The key accountabilities of that position were set out within a five-page job description last reviewed by the Employer on 25 June

¹ See Affidavit of Hans Leger filed on 7 March 2018, at Paragraph 3.

2014². Key responsibilities contained within the Grievor's former work role included financial and operational management, including preparation and maintenance of sector records; and compliance³.

[3] The Cane Planting Grant Scheme has been in existence for several years. It was part of a Sugarcane Industry Action Plan (SAP) designed to increase the national crop volume and average yield by a target date of 2022. The aim of the plan was to make good of an additional 28,000 hectares of fallow area for cane production over an 8-year planting program beginning in 2014. The grants allocated must be expended on the basis of approved established criteria, reflected in growers' grant entitlement and adequate records kept for all levels of expenditure⁴.

[4] As the Affidavit of the Grievor filed on 17 March 2018 makes clear, in June 2017, the Employer caused an investigation into the alleged discrepancies into the cane planting grant, relating to the following issues:-

- (i) Authorisation of payments;
- (ii) Providing inaccurate information; and
- (iii) Acceptance of work order without documentary evidence.

[5] Within his Affidavit, the Grievor states that there was no financial loss to the Fiji Sugar Corporation as a result of his conduct and believed that the decision to terminate was disproportionate in all of the circumstances. It was stated, that the Team Leader who was the authorised signatory, was more culpable as it was his signature that gave rise to any processing of payments.

[6] During his evidence in chief, the Grievor indicated that it was his job to verify that various works had been undertaken, so as to enable the canegrowers to qualify for payment. According to his evidence, the works orders would be processed by the Grievor and signed as having been verified; they would be then sent to the Growers Council and the FSC Sector Team Leader who would both counter sign as authorisation for payment of the grant.

[7] In the Employer's Closing Submissions, the following admissions have been identified as arising out of the cross examination of the Grievor. They include:

- (i) That for Farm No 4137, the Grievor intentionally endorsed in his report that 1.6 hectares of land had been prepared and crop planed despite knowing that only 0.7 hectares of the land was prepared;
- (ii) That for Farm No 4114, the Grievor intentionally endorsed in his report that 0.8 hectares of land had been prepared and crop planted despite knowing that only 0.4 hectares of the land was planted;

² See Annexure DP01 to the Affidavit of Davendra Prasad sworn on 19 February 2018.

³ See Position Description above.

⁴ <http://www.fsc.com.fj/GovGrants.html>

(iii) That for Farm No 19909 the Grievor intentionally endorsed in his report that 0.4 hectares of the land had been prepared and crop planted despite knowing that only 0.2 hectares of the land was prepared.

[8] The Tribunal has also had regard to the evidence adduced by the Employer, largely as provided through the Affidavit material of Mr Davendra Prasad, Personal and Administration Officer⁵ and Mr Savinesh Kumar, Manager Risk and Compliance⁶.

Analysis of Issues

[9] Both parties have identified various Fijian employment case law, in support of what they say should be the just conclusion in this matter. Within the dismissal decision set out in the letter dated 28 July 2017, the Employer makes clear that the conduct is of a type characterised within the *Employment Relations Act 2007* at Section 33 (1) (a), as gross misconduct.

[10] An illustration as to what constitutes gross misconduct can be found within the decision of Wati J in *Maritime Safety Authority of Fiji v Narayan*.⁷ While the category of case is an evolving one, the Tribunal is satisfied that the conduct of the Grievor can fall within such a definition. As alluded to earlier, the role description of the Grievor is founded upon compliance and procedure. What confidence can anyone have in a grant scheme that has no checks and balances?

[11] Whatever the motivation of the Grievor for acting indifferently to his duties, he should have known much better. The Team Leader was in effect relying on the information that the Grievor had supplied as being correct. It would be a very inefficient system if it was the case that the Team Leader needed to check each and every application for payment, to ensure measurements and planting accuracy. That role was for the Grievor to undertake. Whilst the Employer contends that the Grievor was 'signing off' as some altruistic measure⁸, the simple point is, that it is not his money.

[12] Having regard to all of the material provided by the parties, the Tribunal is of the view that the Employee engaged in gross misconduct. Such behaviour entitles the Employer to summarily dismiss the Grievor for the purposes of Section 33 of the Act and also renders the dismissal decision justified in the context of *Kumar v Nanuku Auberge Resort Fiji*⁹.

[13] For these albeit succinct reasons, the matter shall not succeed and the application for remedy should be dismissed.

⁵ See Affidavit sworn on 19 February 2018.

⁶ See Affidavit sworn on 20 February 2018.

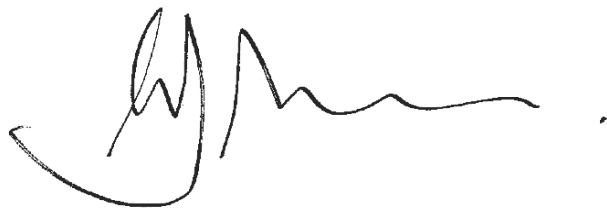
⁷ [2016] FJHC 1; ERCC13.2013 (4 January 2016)

⁸ This seems to be the only logical explanation for such gross administrative errors.

⁹ [2017] FJET 2; ERT Grievance 122.2016 (10 February 2017)

Decision

It is the decision of this Tribunal that the grievance be dismissed.



**Mr Andrew J See
Resident Magistrate**