

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



## Decision

<b>Title of Matter:</b>	<b>Shahil Lal</b> <b>v</b> <b>Land Transport Authority</b>	<b>(Grievor)</b>  <b>(Employer)</b>
<b>Section:</b>	<b>Section 211(1)(a) <i>Employment Relations Act 2007</i></b>	
<b>Subject:</b>	<b>Adjudication of Employment Grievance (Unjustifiable or Unfair Dismissal)</b>	
<b>Matter Number(s):</b>	<b>ERT Grievance 150 of 2017</b>	
<b>Appearances:</b>	<b>Mr D Nair, for the Grievor</b> <b>Mr G Stevens, In-house Counsel, for the Employer</b>	
<b>Dates of Hearing:</b>	<b>6 December 2017</b>	
<b>Before:</b>	<b>Mr Andrew J See, Resident Magistrate</b>	
<b>Date of Decision:</b>	<b>7 February 2018</b>	

---

**KEYWORDS:** Unjustifiable dismissal; gross misconduct in office; soliciting payments as an employee.

### Background

1. This is a referral made to the Tribunal in accordance with Section 194(5) of the then *Employment Relations Promulgation 2007*. The referred matter relates to a grievance lodged by Mr Shahil Lal, a former Co-ordinator Properties, employed by the Land Transport Authority at its Valelevu offices. The Grievor was summarily dismissed in his employment on 17 May 2017, for soliciting money from a contractor who had and intended to provide services to the Land Transport Authority (LTA).
2. The dismissal came about, after the contractor in question made a complaint against the Grievor for the said conduct and following an internal investigation conducted by the Respondent Employer.
3. At the centre of the case against the Grievor, was a recorded telephone conversation that was made by the contractor, the contents of which were transcribed from Hindustani, in which it seems reasonably clear that the Grievor had sought some financial payment.<sup>1</sup> At hearing, the Employer also alleged that the Grievor had provided a statement to the Audit Unit of the

---

<sup>1</sup> See 'SL3' within the *Employer's Preliminary Submissions* filed on 26 September 2017.

Employer, in which it was conceded that a telephone conversation with the contractor had been made. The interview required that the Grievor provide his thumbprint, as identification of his participation and acknowledgement of that process.

#### **Hearing before the Tribunal**

4. At the hearing of this case before the Tribunal, there were two significant issues that arose. The first, was that intermittently, it was put by Counsel for the Grievor, or the Grievor himself, that it was not the Grievor's voice recorded on the audio file, said to have been taken from the telephone recording made by the contractor in question. Further, the Grievor also subsequently claimed that the statement taken by the Audit Unit as part of the investigation process<sup>2</sup>, was not his, as he had provided no thumbprint on that document.
5. Due to the centrality of that issue, at the conclusion of proceedings, the Tribunal ordered that the Forensic Science Services, Fiji Police, take and compare a thumbprint of the Grievor, against that which was purportedly taken by the Employer during the investigation process. The results of that comparison revealed that both prints were identical.

#### **Conclusions Reached by the Tribunal**

6. This Tribunal is of the view that there is no real public purpose in setting out in detail, the events that transpired that gave rise to the dismissal of the Grievor, nor the proceedings that took place as part of this dismissal hearing. The Tribunal is satisfied that the Grievor has been totally dishonest in his account of events and that there is no public benefit derived whatsoever, in conducting a detailed analysis of the issues against that backdrop.
7. The Tribunal is satisfied that the Grievor had sought to solicit monies from the contractor and that this exchange was captured on the telephone recording device of that person.<sup>3</sup>
8. The fact that the Tribunal was required to verify the Grievor's thumbprint so as to ascertain his truthfulness, should perhaps provide sufficient insight as to the way in which the evidence of the Grievor would otherwise have been received. The Grievor was dishonest in his dealings with the Tribunal and was dishonest in his dealings as an employee.
9. Based on the evidence before the Tribunal and due to the conduct of the Grievor during proceedings, the Tribunal is satisfied that he is an unreliable witness and finds that the Employer was justified in reaching the decision that it did. Whilst this decision is unusual, insofar as it does not set out and compare the competing arguments in the case, for the reasons already articulated, the Tribunal is of the view that this is not required on this occasion.

---

<sup>2</sup> See Annexure 1 to the Affidavit in Chief of Sanaila Seru Lesumaisainiai, filed on 7 November 2017.

<sup>3</sup> Whether or not, the contractor himself had sought to offer or encourage that conduct, is outside of the terms of this statutory inquiry.

**Decision**

10. It is the decision of this Tribunal that:-

- (i) The Grievor has been justifiably dismissed in his employment.
- (ii) That the grievance should be dismissed.
- (iii) That the Employer is free to make application for costs, within 28 days hereof.



**Mr Andrew J See**  
**Resident Magistrate**