



Employment Relations Tribunal

Decision

Title of Matter: Reshmi Mala Shiromani (Grievor)
v
Ministry of Education, Heritage and Arts (Employer)

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

Subject: Adjudication of Employment Grievance

Matter Number: ERT Grievance 140/16

Appearances: Mr D Nair, for the Applicant
Mr A Prakash, Attorney Generals Chambers, for the Employer

Date of Hearing: 12 November 2018

Before: Mr Andrew J See, Resident Magistrate

Date of Decision: 5 June 2019

KEYWORDS: Section 211(a) *Employment Relations Act 2007*; Demotion of Employee, Disciplinary Board Meeting; Natural Justice and Allegations of Misconduct; Hurt and Humiliation.

Background

[1] The previous history to this grievance is set out within an Interlocutory Decision of this Tribunal dated 12 September 2018. The Grievor has been a teacher within the civil service since 1991 and at the relevant time, was employed as the Assistant Head Teacher (Classification Grade ED 5A) at the Indira Ghandi Memorial Primary School. In June 2016, a Special Disciplinary Staff Board, ostensibly convened by the Ministry of Education, Heritage and Arts, dealt with disciplinary allegations that were levelled against Ms Shiromani, relating to claims of unprofessional conduct and insubordination. The upshot of that deliberation, was that the Board had recommended Ms Shiromani be terminated with immediate effect. That recommendation was not accepted by the then Honourable Minister and instead a

decision made that the Grievor be demoted to a Teacher Classification Grade ED 9A, issued with a final warning and transferred to another school.

- [2] The effect of the demotion saw the gross annual salary of the Grievor reduce from \$25,125.00 to \$12,360.00. That is, it was a demotion that exceeded 50% of salary.
- [3] On 9 February 2017, the Employer wrote to the Grievor advising of its intention to reinstate her to the substantive level at Grade ED5A, on the basis that the demotion that had been imposed, “was not within the authority of the Permanent Secretary”. Despite the Grievor resuming duties at the Suva Education Office and then the Vatuwaqa Primary School some time around 23 February 2017, the Employer did not make good the monies lost by the Grievor during the demotion period, until an Order was issued from this Tribunal on 10 November 2017, when the Employer was required to pay the Grievor the amount of \$9,026.68 as compensation for the period 21 June 2016 to 9 February 2017¹.
- [4] On 4 July 2017, the Employer instituted a revised set of disciplinary charges against the Grievor and laid them before the Public Service Disciplinary Tribunal (PSDT). A comparison of the old and revised charges are provided at **Table 1**.

Table 1 - Comparison of Disciplinary Staff Board and PST Charges

Special Disciplinary Staff Board	Public Service Disciplinary Tribunal
Charge 1 - Bullying and abuse of Mr A – a year 6 student	Charge 1 – Misconduct – verbally and emotionally abusing student Mr A
Charge 2 - Degrading statement against Minister	Charge 2 – Misconduct – Degrading statement against Minister
Charge 3 – Provided a false statement on the allegation against Grievor by Head Teacher.	Charge 3 – Providing a false statement on the allegation against Grievor by Head Teacher.,
Charge 4 – Insubordination – By failing to comply with lawful direction.	Charge 4 – Insubordination - Failing to follow instructions of the Head Teacher.
Charge 5 – Threatening subordinate staff.	

- [5] Ms Shiromani was again suspended from duties on 10 July 2017. The upshot of that second round of charges, was that the PSDT found the Grievor guilty of two of the charges dealing with the provision of a false statement and insubordination. On 5 March 2018, the PSDT recommended that the Grievor be severely reprimanded and the quantum of salary withheld during the period of suspension (July 2017 to March 2018), be forfeited.

¹ See Agreed Facts filed by the parties on 8 November 2017.

- [6] On 16 April 2018, the Employer reinstated the Grievor to her former position of Assistant Head Teacher at Indira Gandhi Memorial School, effective from 3 May 2018. On 2 July 2018, this Tribunal had to issue another Direction to the Employer, when it became clear that despite her reinstatement to her position from 3 May 2018, that she had not received any salary up and until that time.

The Case of the Grievor

- [2] In agitating her claim, the Grievor now relies on:
- (i) The *Grievor's Further Submission On Compensation* dated 26 November 2018; and
 - (ii) An *Affidavit Verifying The Facts Relied Upon*, dated 26 November 2018.
- [3] The claim against the Respondent Employer is based on the following:-
- (i) That the Grievor seeks compensation for the penalty of demotion from her position as Assistant Head Teacher to Teacher in the ED9A Grade, until she was reinstated to her substantive position.
 - (ii) That the penalty of demotion in the first instance was based on fabricated recording and irregular statements made against her by persons unknown.
 - (iii) That the penalty of demotion was later retracted and the employer paid the difference in salary which had been forfeited and reinstated to her, when she assumed the position of Assistant Head Teacher.
 - (iv) That the relief of compensation that she is seeking is for the unfair and unjustified actions of the employer in demoting her in the first place as a result of which she faced humiliation, loss of dignity, loss of feeling and loss of personal property;
 - (v) That due to the demotion, the Grievor's salary was substantially reduced as a result of which she faced financial difficulties in maintaining the repayments to her residential property, of which she was required to sell.
- [4] The Affidavit states that the fact that the Employer first demoted the Grievor and later retracted that decision, confirms that the decision of demotion in the first instance was unjustified, unfair and unlawful.

The Case of the Respondent

- [5] The case of the Respondent essentially relies on the following arguments:-
- (i) The Grievor has failed to provide any supporting evidence to suggest the fabrication of any audio recording;

- (ii) The penalty on the forfeiture of the Grievor's salary from July 2017 to March 2018, demonstrates the intention of the PSDT to hold the Grievor accountable;
- (iii) The Respondent had already fully compensated the Grievor for the loss of her salary as a result of her demotion from June 2016 to February 2017.

Brief Analysis

- [6] Much has been made by the Respondent of the audio recording that was relied upon by the Disciplinary Staff Board when they first considered the charges against Ms Shiromani. As an observation only, as the specific complaint pertaining to that recording was also brought before the PSDT, it cannot be fairly said that any issues related to that evidence, could not have been brought before that Tribunal. Issues relating to the integrity of evidence of a proceeding before the PSDT cannot be brought before the Employment Relations Tribunal. The Grievor could have mounted any arguments relating to loss, damage or any other such issue, as part of any submissions in mitigation to the PSDT. This Tribunal will not involve itself in that matter, for that reason. Had the PSDT not dealt with that specific complaint against the Grievor, then the position of this Tribunal may have been different. The fact is though, it did and for that reason that should bring an end to the matter.

A central part of the Grievor's residual argument deals with her claim that her residence had to be sold, as a consequence of her demotion in salary between June 2016 and February 2017. Again these arguments could have and should have been advanced earlier. When this Tribunal issued an Order on 10 November 2017 for the Employer to pay the Grievor the monies that she was deprived in the period of demotion, there were no residual claims of loss being made at that time. Again those issues would have been appropriately dealt with in mitigation, when before the PSDT. The question begs, though it really is not an issue for this Tribunal, as to why such arguments were not made to that Tribunal, at that time. Again, this Tribunal is reluctant to intervene in such matters. It would be a dangerous state of affairs, if the delineation of responsibilities of the respective Tribunals created situations where matters were attempted to be prosecuted across both bodies

- [7] Finally, insofar as any residual arguments of hurt and humiliation are concerned, in the manner in which they have been expressed, these too are matters that should have been argued before the PSDT. There is nothing contained with the material provided by the Grievor in her *Further Submissions On Compensation*, of a residual nature or otherwise, that warrants any departure from the approach already expressed above. That is, that these were all issues that were relevant in any submissions impacting on loss of monies, that were or should have been before the PSDT.
- [8] For the above reasons, this Tribunal will not entertain any further residual claims as made. The Grievance is dismissed and given the nature of the proceedings, each party should bear their own costs..

Decision

It is the Decision of this Tribunal that:-

- (i) The Grievance filed on 7 July 2016, be dismissed.
- (ii) Each party must bear their own costs.



Mr Andrew J See
Resident Magistrate