

IN THE EMPLOYMENT RELATIONS COURT AT SUVA

ORIGINAL JURISDICTION

CASE NUMBER: ERCC 28 of 2018

BETWEEN: **AJAY SINGH VERMA**

PLAINTIFF

AND: **LOTUS FOREIGN EXCHANGE LIMITED**

DEFENDANT

Appearances: *Mr. Niubalavu for the Plaintiff.*

Mr. V. Kapadia for the Defendant.

Date/Place of Judgment: *Monday 25 November 2024 at Suva.*

Coram: *Hon. Madam Justice Anjala Wati.*

JUDGMENT

A. Catchwords:

Employment Law – termination of employment – claim for unlawful and unfair dismissal – for unlawful dismissal, the employer needs to establish that it had justifiable reasons to carry out the summary dismissal and that the procedure prescribed by the law was followed – for unfair dismissal, the worker must establish through the evidence that the employer’s unfair and improper conduct in carrying out the dismissal caused the worker humiliation, loss of dignity and injury to his feelings.

B. Legislation:

- 1. Employment Relations Act 2007 (“ERA”): ss. 30, 33, and 34.**

Cause and Background

1. The plaintiff brings this action for breach of his contract of employment. He was summarily dismissed from his employment on 11 September 2018. He claims unlawful and unfair termination and seeks compensation for the same.

2. He was employed by the defendant as its Manager, Fiji Operations from 29 August 2016.
3. The employer disputes the claim for breach of contract. It asserts that the plaintiff was terminated in accordance with the contract of employment which allows for summary dismissal for serious misconduct.
4. It is the employer's position that the plaintiff was accorded procedural fairness by being asked to respond to all the allegations. He was also given one month's pay in lieu of notice even though he was not entitled to it. Indisputably, a total sum of \$4,193.15 was paid to him.
5. The employer says that the key issues that plagued the relationship between the parties from the beginning of 2017 until his termination was his intimate personal relationship with another subordinate staff named Varsha Yanktesh ("*Varsha*").
6. It is not disputed that Varsha was recruited by the plaintiff soon after him being employed. The employer says that the plaintiff had an intimate relationship with Varsha throughout the period from 2017 to 2018. This caused the plaintiff to blatantly show favoritism towards Varsha. The plaintiff, as a result, acted harshly, penalized and victimized staff who criticized or corrected Varsha for her incompetence, mistakes, or any other inadequacies.
7. It is contended that the plaintiff was unable to objectively see how his personal relationship with Varsha was demoralizing the staff. His victimizing, criticizing, and terminating of the staff due to bias towards Varsha had created a climate of low morale, fear, intimidation and dejection amongst the staff at the head office and other major branches being Thompson Street, Mark Street and Nausori.
8. The employer says that the plaintiff displayed narcissism in that he refused to see any other viewpoint, insisted that he was always right, got staff to praise him and Varsha and made staff fear him.
9. The employer says that the other key issue with the plaintiff was that he wanted to remove the most senior staff at the head office. Her name was Rohini Singh ("*Rohini*"). He saw her as a threat to his leadership and/or activities in the workplace. He made her life difficult in the workplace to the extent that she resigned in February 2017 which she later retracted after the Group Manager Mr. Murray Broadmore intervened.

10. After investigating the complaints, the employer came to a finding that the plaintiff could no longer be continued in the position as a leader. Its staff and business were being affected by his conduct. As a result it terminated the plaintiff from his position.

Issues

11. The following issues need to be determined by the court:

(1) Whether the summary dismissal was lawful? If not, what is the appropriate compensation that the plaintiff is entitled to?

(2) Whether the summary dismissal was fair? If not, then, is there any compensation that ought to be paid to the plaintiff and what is the appropriate compensation to be paid?

Law and Analysis

12. The plaintiff is claiming both unlawful and unfair termination of employment.

13. In order to determine whether the termination was lawful, I will examine the reasons for the termination. If the employer is able to establish that there were justifiable reasons to terminate the worker as it constituted serious misconduct on his part then the termination will be substantially justified.

14. I will also examine whether the employer followed the proper procedures to carry out the summary dismissal. If it did not then the termination will not be justified procedurally and be unlawful.

15. Since the plaintiff is also claiming unfair termination, I will also have to examine whether the manner in which the termination was carried out was just and fair. If the employer conducted itself in a manner that is not fair and proper and as a result the plaintiff suffered humiliation, loss of dignity and injury to his feelings then the termination will be unfair.

16. If humiliation, loss of dignity and injury to the feelings arises out of the fact of the dismissal then it cannot be unfair dismissal. It has to be the improper conduct of the employer that causes the employee to undergo humiliation, have loss of dignity and injury to his feelings.

17. I will deal with the issue of unlawful termination first.

A. Unlawful Termination

(i) Did the employer have justifiable reasons to terminate the worker?

1

18. The letter of 11 September 2018 through which the plaintiff was terminated identifies the reasons for summary dismissal. Succinctly, the following reasons were given for terminating the plaintiff.

(1) Personal relationship with another subordinate staff named Varsha which had a negative impact on the business. The plaintiff was accused of favoring Varsha over other staff, giving her undue credit and mistreating and punishing other staff if they advised or informed Varsha of how to do her work or about any other inadequacies. The same mistreatment would occur if Varsha complained about any staff. The particulars of the allegation are:

- *The plaintiff promoted Varsha as Manager of the Mark Street Branch when there was another staff who was more experienced and knowledgeable. Her name was Poonam.*
- *A staff of the employer named Abhishek of Hanson's Branch had initially made a suggestion on gifting. That suggestion was not recognized by the plaintiff. Varsha highlighted the same thing a few weeks later. He gave her all the credit despite senior staff advising the plaintiff against it.*
- *The plaintiff called Varsha back from her leave to carry out a \$400,000 transaction to give her credit and praise her when that transaction could have been handled by Poonam. The customer was Poonam's family.*
- *A staff named Avnita who works at the head office had called Varsha to tell her about her work and Varsha shouted at Avnita. According to Avnita, she knew that Varsha would complain to the plaintiff so Avnita had put the phone on speaker and a number of senior head office staff heard Varsha shouting at Avnita. Varsha then complained to the plaintiff. The plaintiff then sought support for Varsha's point of view even though at least two head office staff confirmed to him that Varsha's tone was harsh. The plaintiff gave a written warning to Avnita which was later withdrawn on instructions from the Group Manager Mr. Murray Broadmore as fair and due process had not been followed.*

- *The Manager from Ba Mr. Ritesh had visited Suva. Ritesh made some constructive comments to Varsha about how much time it was taking to serve a customer. Varsha complained to the plaintiff about Ritesh. The plaintiff then asked Varsha to call and apologise to Varsha and Poonam even without conducting a proper investigation. It was alleged that the plaintiff informed Ronil that he was going to reprimand Ritesh through the Area Manager, West, Mr. Alveen and that he would also tell Alveen that the complaint came from Ronil when no such complaint was made by Ronil.*
- *When the plaintiff was in India, Varsha had given her Mark Street Branch office keys to Poonam to open the branch as Varsha was going to be late. Varsha had not sought permission nor advised head office of this. Poonam advised that she slept in that day and came to work late. A customer who came to Mark Street Branch called Head Office to advise that the Branch was not open. Head Office staff Ashnil went to the branch to investigate and confirmed that the branch was indeed open late. When the plaintiff came back from leave, the defendant says that it appears that Varsha complained to the plaintiff and without investigating anything properly he jumped to the conclusion that head office staff were ganging up on Varsha since he was away on leave.*

(2) *Using his position and undue influence to unfairly treat staff who questioned his decision making or opposed his point of view. The particulars of this accusations are:*

- *In respect of one staff Ms. Rohini. The plaintiff is accused of not having taken kindly to Rohini's views on expenditures incurred by the plaintiff and her views on what is in the best interest of the employer. The plaintiff therefore is alleged to have started picking on her and humiliating her in front of other staff. Once he emailed the whole country to demean her for a very trivial matter that should have, according to the employer, been resolved personally.*
- *That the plaintiff directed staff to write reports to suit his preferred outcome, which was either seeking praise for himself or someone he favored or to victimize and punish people he disliked. According to the employer, Alveen and Bhavishma had confirmed that the plaintiff directed them to write negatively about Rohini so that he can use that against her to pressure her to resign. Alveen had also informed the employer that the*

plaintiff had directed them to write in his favor to cast him in good light with senior management. Ronil and Ravinesh Reddy also confirmed that he wanted Varsha's name to be mentioned in anything good that needed to be reported.

- (3) Interviewing a prospective staff at his personal residence prior to formally interviewing her at the head office and eventually offering her the position of Foreign Exchange Consultant at Thompson Street Branch. Whilst the employer says that there is no allegation of any wrong doing, the behavior was viewed as highly irregular and morally wrong. The employer says that the plaintiff's phone records show that he called her a number of times, including late night. The employer views that as highly unusual for a male manager to be calling a female prospective staff late at night. The staff is Kaveena Gounder.*
- (4) Contacting staff during the investigation period when he was specifically asked not to contact any staff members or ex-staff who may be related to the investigation. The plaintiff kept in contact with Varsha which the employer says breached the code of conduct and seriously compromised his credibility.*
- (5) Calling and investigating people related to the investigation to go to Labour Office and the Police to complain about the organization and in return made promises to help them against the employer. The employer viewed that as unethical behavior and a breach of the confidentiality agreement that he had signed when being investigated.*
- (6) Being in breach of working hours.*

19. The contract of employment permits termination of employment for serious misconduct. It reads:-

"Ending employment: Serious Misconduct

If, after following a fair process the employer concludes that the employee has engaged in serious misconduct, the employee may be dismissed without notice.

Serious misconduct is behaviour that fundamentally compromises the employer's trust and confidence in the employee. Serious misconduct includes, but is not limited to:

- Theft.*
- Sexual or other assault.*
- Harassment of a work colleague or customer.*

- *Use of illegal drugs at work.*
- *Repeated failure to follow a reasonable instruction.*
- *Deliberate destruction of the employer's property.*
- *Actions that seriously damage the employer's reputation.*
- *A serious breach of the employer's policies and procedures."*

20. Section 33(1) (a) of the ERA also permits summary dismissal where a worker is guilty of gross misconduct.

21. Let me now examine the evidence and determine whether the various allegations in the termination letter were met.

22. The very first and what appears to be the root of all the problems is the plaintiff's alleged relationship with one another staff Varsha which caused him and Varsha to mistreat other staff and favor and get favors from that relationship to the detriment of other staff and the employer.

23. The plaintiff was the leader of the Fiji Branch. All other staff were his subordinates. He was expected, by virtue of being in that leadership role, to be honest, to show integrity, to lead by example, to be fair and impartial, to be inspirational and show empathy and humility.

24. The plaintiff reported to two senior personnel. One was the head of the organization, Mr. Pravin Kumar and the other was the Group Manager based in New Zealand Mr. Murray Broadmore.

25. Both the heads of the Institution are based in New Zealand. Both expected the plaintiff to be a leader who could guide the staff, boost their morale, treat everyone fairly and equally, have empathy with them, understand their work habits and improve on the weak ones and be honest to all of them and the Institution.

26. The above is not something extraordinary to require from a leader. All the leaders should have that quality.

27. The evidence of both Mr. Kumar and Broadmore convinces me that they are exceptional leaders. They are leaders with a lot of value. They believe in truth and humanity. For them doing business is one aspect. Together with doing business they want the staff to be treated like family. They are people with exceptional fair and honest qualities. They do not run down their workers. They will not embarrass, humiliate and treat anyone differently. They themselves had put in a work culture of love, harmony,

transparency, humanity, integrity and equality. Every institution requires leaders of that quality. Mr. Verma was expected to demonstrate similar quality.

28. Mr. Verma's job description, which he agreed formed part of his contract of employment, clearly states that, he should *"being the leader of the organization, set good working habits and provide direction to subordinates to create a friendly and warm atmosphere that will encourage team spirit and sense of belonging."*
29. The employer's contention is that the worker's conduct towards the employees was below the expected level of a leader. He in fact practiced and promoted a culture that demoralized the staff, caused some to resign, to lose work, to lose interest, feel dejected and humiliated, and feel threatened.
30. The evidence of the employer and the worker clearly suggests that the worker was not a fit and proper person to lead an organization. He practiced a culture of discrimination, unfairness, causing fear and humiliation to all staff. This all arose as a result of his relationship with Varsha.
31. The worker does not deny any personal relationship with Varsha. He says that both had a constitutional right to find partners. They were both single and eligible and he cannot be deprived of his right to choose a partner of his caliber.
32. The employer does not refute that the worker has this right to have a life partner of his choice. Its concern was that having a subordinate staff as his partner had the potential of creating conflict at the workplace. There could be allegations of sexual harassment or favoritism and any one of this could impact on the worker's and the co-worker's performance. Consequently the business would be affected.
33. The employer's concerns were valid. That is exactly what happened. The evidence clearly suggests that. I will turn to the evidence to identify this.
34. The employer did not raise the issue of the personal relationship seriously until it started having an impact on the employer's reputation as it affected staff morale.
35. The employer received a letter from one Ronil Chand. He was the Manager of the Nausori Branch. Ronil had resigned when he wrote that letter.

36. Ronil's letter of complaint to the employer was marked as *Defendant's Exhibit 18*. He wrote and said why he had resigned. His concerns caused the employer to cause an investigation against the worker. It is important that I outline the concerns that Ronil had raised in his letter. Ronil stated that:

- *When he moved to Nausori Branch, he was approached by members of the Senior Management who told him that the plaintiff had used his name in gaining advantage for another staff and thus spoiled his image with upper management.*
- *His position was used by the plaintiff to help him bring favour to Varsha as the plaintiff knew that Ronil knew about his secret. The plaintiff would tell him that he was the only one that the plaintiff could trust. The plaintiff was therefore very aggressive in letting Ronil know that he should be loyal to the plaintiff as it was the plaintiff who hired Ronil and one who was going to give him his performance appraisals.*
- *Ronil says that did not think much of the business between the plaintiff and Varsha. He was happy doing his job as he had a life of his own.*
- *After Ronil became the Manager, the plaintiff made sure that Ronil wrote Varsha's name in all the things he achieved by telling him to write emails about her.*
- *The plaintiff made one Ritesh to call and apologize to Varsha for something Ronil says he had not complained about but just because the plaintiff Mr. Verma did not like the way Ritesh looked at Varsha while visiting the branch.*
- *The same thing happened with another worker Avnita when she talked to Varsha. The situation escalated so high that it became childish and annoying rather than helpful to anyone.*
- *Ronil says that he did not give much thought to all of this until the plaintiff hired a new staff named Kaveena Gounder. He learnt that during that time Varsha and the plaintiff were having arguments of some sort. When Kaveena started working, she told Ronil that her first interview was at the plaintiff's home. Ronil says that Kavina told him that the plaintiff called her, picked her up and took her home in the evening to interview her at his private residence. Varsha saw them at his home the same afternoon. Varsha came to work the next day and had a complete breakdown after the staff had gone for the day.*

- *Varsha hated working with Kaveena. Varsha told Ronil that the plaintiff had hired Kaveena to make her jealous. Soon after the plaintiff and Varsha got back together, the plaintiff started asking Ronil about Kaveena's performance. The plaintiff would tell him that he was aware from some staff in the branch who told him that Kaveena was not doing well. The plaintiff told Ronil to write reports on her. Ronil states in that complaint that he told the plaintiff that he could work with Kaveena but for some reason the plaintiff just wanted her out of the company and that is exactly what he did. Kaveena had recounted this mistreatment to all of the Nausori Branch staff too.*
 - *It was from Kaveena's incident that he distanced himself from the plaintiff and the plaintiff did not like that. Ronil states that he was tired of letting the plaintiff use Ronil's position for his gain. The plaintiff would even use his name on things Ronil did not know about and other staff hated him for it. Rohini had told him this personally and also said that they saw that even after Ronil moved out, the problems in Suva Branch still persisted. Everyone told him that the plaintiff had ruined his name to further his own interest.*
37. After giving details of the unethical and unfair work environment created by the plaintiff, Ronil states in his complaint that his intention of writing the letter was for the employer to help the remaining employees. He also said that whether any action is taken towards anyone about these information is no longer his concern.
38. Ronil states in that letter that he is not interested in gaining anything as he has happily moved on. He is taking the good memories and leaving the bad ones behind. However he wants other staff not to suffer. According to him, they were suffering.
39. Ronil's letter is a clear example of how the plaintiff wanted to protect Varsha and let her be shown in a better light than other staff. The letter gives details about the insensitive nature of Mr. Verma, how he could not contain his relationship and let other staff be affected by it.
40. Ronil did not give evidence in court but that letter is directly written to the employer. That was the basis of the awakening call to the employer that the vision and culture it had of treating employees fairly and equally was badly disturbed by Mr. Verma. The staff morale had gone down. One had resigned. It was Ronil himself who had suffered and resigned. Why would he write a letter after resigning? He did it for others. He did it to protect the other staff. He had nothing to gain. He had already cut ties with the defendant.

41. I accept the letter of complaint of Ronil as a valid concern based on which the employer had to act. It would have been wrong of the employer to neglect the letter and pretend that all was well. For the benefit of its reputation and progress, the employer had to start an investigation on Mr. Verma which it thankfully did.
42. The evidence of the employer clearly indicates that due to his personal relationship with Varsha, he favored her. One such instance was when he recommended Varsha for promotion as Manager of Mark Street Branch when Poonam had been working at Mark Street Branch before Varsha and was more senior to her.
43. The worker says that he recommended Varsha because Mr. Broadmore had suggested to Mr. Verma that Poonam did not have the teeth for the job. Mr. Verma says that Broadmore said to him that if anyone tells him that there is favoritism then he will back Verma up. Broadmore denies that. He explicitly said that he did not take part in the selection in the initial stages. He testified that Mr. Verma had recommended only one name which was Varsha's and since he was based in New Zealand, he did not know about the Fiji operations in such depth. He relied on Mr. Verma's skill and assessment and accepted that one name that was recommended.
44. Mr. Verma does not deny that he recommended Varsha's name. He only says that Broadmore suggested Varsha's name. If that is the case then Verma should not have recommended Varsha's name. He should have let Broadmore make the assessment and recommendation for Mr. Pravin Kumar to do the selection. Mr. Verma had conflict of interest. His suggestion of Varsha's name, would to the least, indicate apparent bias.
45. There is a provision in the contract regarding conflict of interest. It reads:-

"The employee agrees that they have disclosed all known potential conflicts of interest.

If the employee becomes aware of any potential conflict between their interests and the employer's business, or an issue with the potential to affect their work performance, they must immediately tell the employer.

The employer and employee will discuss the issue and work out together whether it is a real conflict of interest.

The employee must act on any reasonable instructions from the employer about real conflicts of interest. If there is no other reasonable alternative, the employee's employment may be ended, following the correct process."

46. Mr. Verma breached the contract of employment by not informing the employer that he is suggesting the name of Varsha and that he has a conflict of interest when he did so. That is an unacceptable conduct. There is no evidence that suggests that Mr. Verma declared his conflict of interest when he suggested Varsha's name.
47. Another instance of favouring Varsha was the alleged incident when another worker Mr. Abhishek of Hanson's Branch made a suggestion on process improvement on gifting. Mr. Verma is alleged not to have recognized this but when Varsha highlighted the same thing a few weeks later, he gave her all credit despite senior staff advising him against it.
48. Mr. Verma did not deliberately address this allegation in his direct examination. He was interviewed by the Managing Director Mr. Pravin Kumar at the investigation stage. The issue was questioned and answered as follows: -
- "Q: Ashnil said that there was a recent skype message about gifting and was first raised by Abhishek of Hansons but nothing was done, but when it was raised by Varsha soon afterwards, you got involved and praised Varsha for her great idea. How do you respond?*
- A: I do not want to answer."*
49. In his testimony in court, Mr. Verma accepted that the interview questions and answers were correct which means that there was no tampering.
50. In court, under cross examination Mr. Verma was asked what his response was to the question on gifting during the investigation, he said he did not have specific details to give an answer Mr. Kapadia then asked what details he needed, Mr. Verma responded that it did not come to his mind what was being alleged. He was further questioned as follows:

"Cross Examination

Q: You did not know that issue of gifts raised? You accepted and implemented the issue. Varsha's proposal you accepted?

A: Any good suggestions, I will commend.

Q: You didn't praise Abhishek. It was his idea?

A: Don't remember that. Abhishek later made a Manager."

51. After hearing Mr. Verma at length, I was convinced that he was a very evasive witness. He will avoid answering questions or use flowery language to cover up his unethical behaviour and standards.
52. The cross examination questions by Mr. Kapadia which I have outlined above very clearly shows that Mr. Verma knew what the subject was about. He knew he failed to praise the original idea given by Abhishek. He wanted his girlfriend to have credit for someone else's idea that is why he did not acknowledge and praise Abhishek. It is not rocket science to come to a conclusion that such bad leadership habits can belittle staff who work hard and make suggestions for the progress of a company.
53. Mr. Verma says that in the interview he said he did not want to answer because he did not have specific details. He is not honest in that reflection. If he did not have details, he could have asked the Managing Director. All his other answers are so long and evasive such as not admitting in the interview that Varsha was still his girlfriend. He said it was just professional and friendship. In court he explained by saying that friendship could mean personal friendship.
54. Mr. Verma admitted that he is a person who is quiet elaborate with his words. I find that he was not telling the truth when he told the court that when he said friendship it could mean personal friendship too. He did not mean that in the interview. He certainly did not. What fortifies my view is that in that same interview he told Mr. Pravin Kumar, that he "*has had*" a relationship with Varsha. He does not say that he continued to have one. The relationship continued after termination. He admitted that in court. Why was it then necessary for him to say in court that friendship could mean personal friendship when he had denied any relationship with Varsha at the time of the interview?
55. Now back to the issue of gifting, I am convinced that Mr. Verma knew what Mr. Pravin Kumar was asking him in the interview. He did not want to answer because it was the truth that he failed to give Abhishek credit for his idea. He knew his leadership style was unfavorable to the work environment as he gave his girlfriend favors.

56. Under cross-examination, he said he does not remember that it was Abhishek's idea. How can he not when everyone else at the workplace does and have complained about that issue?
57. Mr. Verma's conduct established another instance of favoring his girlfriend. He had conflict of interest and his personal relationship was damaging the working environment. This is not a healthy aspect for the employer which justified the employer's concern.
58. Another instance of favoring Varsha was asking her to handle a \$400,000 transaction in the Mark Street Branch when she was on leave.
59. It is clear from the evidence that this customer was related to another staff named Poonam. Poonam was at work. She could have handled the transaction. However, I accept that it was Mr. Verma who learnt about the transaction and wanted Varsha to handle it for everyone to praise her.
60. Mr. Verma agrees that Varsha was on leave that day. Why was there a need for her to come from leave and handle it? I accept that it was Mr. Verma who got all this organized for his girlfriend to be shown in a favorable light. This is favoritism. Mr. Verma fails to see it. In fact, in his evidence in court, Mr. Verma said that the employer should be thankful that Varsha attended to the transaction although she was on leave. Mr. Verma did not explain why Varsha needed to attend to this transaction when she was on leave. Another working staff could have done that. It goes to establish the employer's concerns how Verma wanted Varsha to shine and be praised all the time.
61. There are other instances of Mr. Verma favoring his girlfriend even when she is the wrongdoer. Varsha was the Mark Street Manager. She had the keys to open the office.
62. The evidence of Mr. Verma clearly establishes that when he was away in India, Varsha did not come to work. She gave the office keys to Poonam to open the office. Poonam slept in and did not open the office. Varsha was at fault. She had no authority to delegate the task to Poonam without permission.
63. When Mr. Verma came back from India, he learnt of the issue through the emails. Instead of dealing with Varsha and her omission, he defended Varsha by saying that head office staff were ganging up against Varsha. He accepted in his interview with the Managing Director that Varsha was wrong and that he did not take any action. He accepted that the head office team only did their work.

64. In cross examination he said that he did not take any action because he was in India. He could not have taken any action. I find that this is again an action of favoritism.

65. When Mr. Verma came back from India, he learnt of Varsha's fault. He should have dealt with her seriously. He did not. He blamed head office staff instead.

66. It is appropriate to reflect on the interview questions and answers during the investigation which clearly shows how Mr. Verma blamed others for Varsha's fault. He practiced unethical behaviour to protect his girlfriend. He did not act in the interest of the employer. He ought to have taken action. Opening of office on time was essential as customers need service to be provided. If service is not provided on time, the customers can turn to other competitors.

“Q: There was an issue of Mark Street Branch opening late one day while you were away in India and later you read the emails and said the staff were ganging upon Mark Street Branch. Do you know what happened that day?”

A: I read the email and the ganging up comment I would have later with Murray. Actually I wasn't here so I had no idea until I read the email upon return.

Q: So who do you think was at fault?

A: Mark Street Manager and the staff were at fault.

Q: Were you aware that Varsha had given her keys to Poonam that day without anybody's authority and Poonam slept in and hence was late?

A: No.

Q: Then it is unfair on your part to blame head office staff for doing their job of investigating this and reporting. What do you say?

A: Yes, I agree that the Head Office team did their work, however I was advised later by the security officer that our compliance manager Ashnil made him hurriedly sign a declaration which he said he did not even read and to date does not have a copy.”

67. I reiterate that the employer could lose business if the office is not open on time. The least that was expected of Mr. Verma was that he dealt with Varsha's flaws objectively. He did not take any action. He would give other staff warning letters for trivial instances. He failed to take any action against Varsha.

68. Other alleged instances of victimizing staff and favoring Varsha was is in respect of the staff Avnita and the Manager Ba Branch, Mr. Ritesh.

69. In the interview session by the Managing Director the question and answer in respect of Avnita was as follows:-

“Q: There was a case of Avnita where you were allegedly very loud and harsh with her. This related to a case of Varsha talking to Avnita on the phone which was heard by other Head Office staff and all confirmed that Varsha was rude but it seems you have told Avnita off.

A: The staff that have now changed their tune Ravi Reddy and Bhavishma had both confirmed that Varsha had not yelled as alleged by Avnita and the other thing is why did Avnita put a normal conversation on loud speaker. What was the hidden agenda?

Q: I put it to you that staff are scared of you and you direct them to write in a manner that you desire and Avnita wanted other witnesses to support her case.

A: That is not true, I am always friendly with my team here even joking with them which General Manager would do that.”

70. In his examination in chief Mr. Verma did not deny that he told Avnita off for this incident. From the examination in chief and the interview questions it is clear that Mr. Verma was not happy with Avnita putting the phone on speaker and exposing Varsha. In the examination in chief evidence he continues to blame Avnita for her bad behaviour of not listening to senior staff.

71. In cross examination he questions the hidden agenda of putting the phone on speaker.

72. There is no dispute that Avnita had put the phone on speaker during a conversation with Varsha. This establishes that other staff felt insecure and victimized by both Varsha and Mr. Verma. If Varsha was not using her relationship to victimize other staff, Avnita will have no reason to put Varsha on speaker.

73. Mr. Verma fails to see the motive of Avnita on why she put the phone on speaker. He instead blames Avnita. He had lost objectivity as the employer asserts and any leader without any objectivity is not fit to lead the staff. The staff had no recourse to address their concerns when there is workplace conflict. Mr. Verma did not deal with Varsha’s aggression appropriately.

74. In respect of the Ba Manager Ritesh, I do not find any accusation put to Mr. Verma in the interview by the Managing Director. This was not even addressed in the cross-examination evidence. The only reference to Ritesh's incident is made in Ronil's complaint as follows:

"He even made Ritesh call and apologize to Varsha for something I didn't complain just because he didn't like the way Ritesh looked at Varsha while visiting the branch."

75. The allegation is something that could not be established at trial. I do not find the allegation met. However *Defendant's Exhibit 12* clearly shows how Verma writes on behalf of Ronil a statement to praise himself. He does not deny this. The employer's allegation is correct that Verma was only looking for praises and would only support staff who did this. No one could question him.

76. He admitted in the interview that he asked Bhavishna to email about Mark Street Branch because they had said that Mark Street Branch was doing well. I do not know why he would want them to email particularly about that Branch when that Branch was not doing any extra ordinary work unless it was to put Varsha in good light. All other branches did well too.

77. The next is the incident with a very senior staff named Rohini. Rohini, as indicated by Mr. Pravin Kumar and Mr. Broadmore, has been working in the employ of the defendant since its inception. She is viewed by both as a very loyal and sincere worker who acts in the best interest of the Company. She is very experienced and is well versed with her work. Her work and position in the Company is very essential.

78. The allegation against Mr. Verma is outlined in paragraphs 13 and 14 of the termination letter. It states:-

"[13] There are also allegations that you use your position and undue influence to unfairly treat staff who may question your decision making or oppose your point of view. Mrs. Rohini Singh has worked for our organization since inception in August 2003. She is one of the senior most staff member of our staff and is in-charge of the finance department. She is a very proficient worker with good moral values. Since you joined our organization 2 years ago, you have made some decisions including expenditure authorizations which Rohini has questioned you or she may have highlighted decisions that she felt were not in the best interest of the organization. You don't seem to have taken kindly to this and viewed this as challenging your authority and started picking on her and humiliating her in front of other head office staff. Once you emailed the whole country to demean her for a very trivial matter that should have been resolved with her personally.

[14] *There is also accusation of you using your position to direct staff to write reports to suit your preferred outcome, whether seeking praise for yourself or someone you favour or to victimize and punish people who you dislike. Alveen and Bhavishna have confirmed you directed them to write negatively about Rohini so that you can use that against Rohini and pressure her to resign. Ronil and Alveen have also advised that you directed them to write in your favour to cast you in good light with senior management. Ronil and Ravinesh Reddy have confirmed that you wanted Varsha's name to be mentioned in anything good that needed to be reported."*

79. In the interview process, Mr. Verma admitted that he had reprimanded Rohini through an email and sent the same to all the branches. This incident occurred when Rohini wanted the leave application by the staff to be copied to her too as she was doing payroll. Verma did not like this suggestion. He reprimanded Rohini by an email which was circulated to everyone. Mr. Murray Broadmore spoke to Mr. Verma about his tone and stated that the nature of that communication across the country was not warranted.

80. The relevant question and answer from the interview is:-

"Q: There was an issue with Rohini's skype message where you seem to have reprimanded her through email to all branches. Murray spoke to you about this said the tone and nature of this communication across the country was not warranted and you agreed with his comments.

A: Yes."

81. In the examination in chief, Mr. Verma denied that he picked on her and humiliated her in front of other staff. I do not find Mr. Verma to be honest in his evidence in court. In the interview, Mr. Verma acknowledged that he reprimanded Rohini openly. There is no reason given why he agreed in the interview to have reprimanded her and subsequently changed his evidence in court. I find that whoever challenged Mr. Verma's authority did not have a peaceful time at work. Further, whoever tried to tell Varsha about her mistakes became Mr. Verma's target.

82. Rohini's email of 14/5/2018 is very clear. There is no doubt that Rohini wrote that email. The incidents referred to in the email is not denied by Mr. Verma. The email was tendered in as *Defendant's Exhibit 6*. Before this email, the incident where Mr. Verma had reprimanded Rohini by an email which was sent across to all the branches had already occurred.

83. Rohini writes in that email that:

- *Varsha was being favored and things were not good in Lotus. Other staff and she herself had noticed that Varsha was being favored a lot. No one is saying anything or else they will be penalized.*
- *On 12 May 2018, Varsha's branch, the Mark Street Branch, where Varsha was the Manager did cancellation of a repat entry without advising Rohini or the staff at the head office who had excess to editing.*
- *Rohini skyped Varsha regarding this and then later called her to explain what happened. Rohini also explained to her the process. Varsha said that she will let Poonam call Rohini.*
- *Rohini then said to Varsha that as Branch Manager she should know as Poonam was busy. Varsha was not listening. Rohini then said to Varsha that she was not listening. Later everything was alright.*
- *At mid-day, Mr. Verma called Rohini and asked if there was a cancellation done at Mark Street Branch. Rohini said yes and that Poonam was advised on what needed to be done.*
- *Mr. Verma then started saying that she should not have said to Varsha that she is not listening as head office staff must have heard that. Mr. Verma told her that he had already told her before to talk nicely to staff.*
- *Rohini explained that she did not speak rudely to Varsha but in fact Varsha was rude. She also told Mr. Verma that all was sorted out. Mr. Verma said that he will let Mark Street Branch email her and then Rohini can explain what needs to be done.*
- *Mark Street Branch emailed Rohini and copied Alveen in. Rohini explained what needed to be done.*
- *At around 1.20pm, Rohini said she called Mr. Verma and said that Mark Street Branch had emailed and everything was solved. Mr. Verma also talked nicely.*
- *Rohini said that she also told Mr. Verma that Ashnil was viewing cancellation of another money gram entry on Saturday when he found out that Mark Street Branch was giving a much higher purchase rates to customers. Rohini said that Ashnil will let him know of this on Monday.*
- *At around 4.25pm Mr. Verma called Rohini again and started saying that he is not happy. He said that Varsha had complained that Rohini had said to Varsha that Varsha was not listening. Mr. Verma started repeating the incident again which was already resolved. Rohini said that she told Mr. Verma that the matter was solved.*

- *Mr. Verma then started saying that it seems that Rohini was after Mark Street Branch. Rohini said she told him she was not.*
- *Mr. Verma then started talking about the purchase rates. Rohini told him that it was not her but Ashnil who had picked this up. Mr. Verma then started saying that she also gave rates to her in-laws. Rohini said that she explained to Mr. Verma that the rate she gave to her in-laws was what she gives to other customers and that too not what Mark Street Branch had given.*
- *Rohini wrote in that complaint that as General Manager of Lotus, Mr. Verma should have kept this rates matter confidential and should have talked to Ashnil on Monday but it appeared that he discussed this with Varsha. Rohini says that Mr. Verma seems to be leaking information to other branches.*
- *Rohini said she told Mr. Verma that he was telling her something else but she will do what Mr. Pravin Kumar, the Managing Director, had told her.*
- *Mr. Verma then said that Rohini was disrespectful and that he will have a meeting with her, Varsha and Alveen.*
- *Rohini said that Mr. Verma had spoken to her in a high pitch. Her family was with her and her husband was very upset with all this. Rohini expressed concern that Mr. Verma should not have called at that time and talked like that.*
- *Rohini then beseeched that either Pravin Kumar or Broadmore came to Fiji and talk to the staff.*

84. Mr. Verma does not deny calling Rohini after Rohini had called him and explained that everything was sorted out. However he said that when he called back, he addressed Rohini's personal behaviour of being rude. What comes out of this is that Varsha complained to Mr. Verma about Rohini and Mr. Verma did not like this. Even after Rohini's explanation, he calls her after office hours when she is with her family and reprimands her.

85. Mr. Verma was clearly favoring Varsha. He was persistent at the behest of Varsha to punish and demoralize Rohini. He allowed his love affair to affect other staff. If Varsha was involved in an issue, Verma could have referred the dispute to the Group Manager so that an independent assessment was made. Mr. Verma obviously had conflict of interest and he ought to have refrained from hassling Rohini when it came to Varsha. Rohini had already explained her position.

86. It was the third time Mr. Verma was speaking to Rohini about that issue. There was no need. It shows how Mr. Verma was persistent and out to demean staff who would say anything to Varsha even if it was work related and needed addressing.
87. Rohini's email confirms the climate and culture of fear that Mr. Verma had instilled in the workers. He continued to punish Rohini as Rohini obviously is a vocal person and as and when she could, she would stand up to Mr. Verma. Mr. Verma will never allow that to happen. He already clarified in his evidence that Rohini was challenging his leadership. He will not let anyone do so.
88. It is evident from Mr. Verma's evidence that he does not like being told anything. He did not like being questioned. He considered himself so superior that he felt that anything he said or did was written in stone. His conduct is evidence from his email to Mr. Broadmore, the Group Manager, which was tendered as *Plaintiff's Exhibit 6*.
89. Plaintiff's Exhibit 6 was written by Mr. Verma when Rohini had resigned and asked for Mr. Pravin Kumar's cell phone number from Alveen. The tone of his email expresses disgust on why Rohini asked for the Managing Director's number.
90. Mr. Verma's email shows that he is not a person who could listen to staff problems, be empathetic and provide solution. He would cause problem and even make a person's resignation difficult.
91. I think that his email should be reproduced here to show how he handles a simple situation which required no agitation and conflict. The tone of his email shows how he thinks that no one should question his decision. It also shows how eager he was to let Rohini go. He was not interested in even thinking for a while that Rohini had worked for the employer for ages. She had the experience and caliber to work. Mr. Verma even goes to the extent of telling Mr. Broadmore how he should not let Rohini retract her resignation.

"Dear Murray,

Please note attachment.

Rohini has tendered in her resignation- Under no duress and on her own accord. I accepted it.

Then she called Alveen today and asked him for Mr. Pravin's Fiji cell and also told Alveen that she had resigned.

Alveen denied giving the phone contact and called me instead as per protocol – which is what staff should do and show loyalty.

Her resignation was on her own accord. We met earlier in the day in the boardroom and she did not say why she was resigning. It was a very quiet meeting and she asked for a reference on which I agreed that I will give her reference as she wanted.

Now, upon knowing that Rohini called Alveen for Mr. Pravin's phone number, I was disappointed. I called her to talk in the board room. I asked her why was she asking for Mr. Kumar's number when she had resigned on her own accord and that I am country head.

She replied saying that I did not bother to ask her why she was resigning. Why would I?

I did not ask her to resign.

Then she said to me that Mr. Kumar gave her all authority to call anytime. I said to her, Mr. Kumar would have done that for business matters BUT NOT to bypass protocol having a GM here and probably going to do whatever she did last time.

Murray – I am very disappointed with this type of mindset of some staff here that they can go to MD direct even on staffing matters and I feel completely ignored by staff like Rohini time and again! She has done this before as told by AK (you can confirm this with AK) that she did this to him and Ram – So I am not buying into such nonsense!

After she gave her resignation, in order to run our business without hiccup, I had a talk with Alveen, Ravi Reddy and Bhavishna if we can run the business here in case Rohini goes away, they all said, "boss, we can"! Ravi can do rates, Bhavishna can do the FCA, whilst AK and Alveen can assist with Deal until we find someone suitable.

Hence, as Country Head, I am taking this as a threat to leadership from some staff here who have been destabilizing the efforts I have been putting to have a good team in Fiji.

We have seen some classic example of some staff, namely Ranjana, Shiwani, Shayal doing same at TSB and how difficult it was for me to clean this mess. TSB finally has a good team.

Therefore, we should go ahead and take Rohini's resignation and we SHOULD NOT beg her to stay on OR let her do some emotional blackmail.

Rohini has a bigtime attitude, is rude with branch staff and can create more destabilizing.

She did this earlier when Mr. Pravin was here during Rem-Review and Mr. Pravin will remember that meeting we had with Rohini and Bhavishna and Mr. Kumar himself told Rohini that she was never happy with pay etc, and can go whenever she wanted. Rohini did not learn from this and here we are today.

I am knocking off for the day and need to say that staff should not have such a freeway to disrespect a country head, bypass and then show such attitude – we do NOT need such nonsense.

Thanks & Regards”

92. On the contrary and in reply, Mr. Broadmore explains to Mr. Verma what is expected of a leader. The email was tendered as *Plaintiff's Exhibit 7*.

“Hello Ajay

I am somewhat surprised by the tone of your email regarding Rohini's resignation and I see she has since asked to retract this.

While I understand the need for protocol to be followed I hasten to point out that it appears in the most part she has done exactly that. The resignation was submitted to you only in the first instance and you accepted it.

Rohini subsequently asked for Pravin's number. Rohini has worked for Pravin for many years and I don't read into what you have said to me that she was doing anything underhand or out of line. It is entirely possible she just wanted to take the opportunity to have a chat to him and explain her reasons for leaving. Pravin has always had a very open door policy with all staff at all levels and I don't really see an issue with that. In my own experience if there was something of concern that came out of a conversation with Pravin he would raise it for an open discussion. Having said that am I seeing the full picture or is there more underlying tension that exists here but not mentioned in your email.

Just as an aside I always make it a point of asking why a staff member has chosen to leave. This is a good opportunity to gather feedback about our company. In NZ we have an Exit Interview document that I will share with you for exactly this purpose. I not only think it is healthy to ask an employee's reasons for leaving but I fully believe most employees would expect us to ask.

I respectfully suggest you don't take this as a threat to your leadership. Let's discuss in more detail when I come over next week.

In the meantime I believe we should agree to the retraction of the resignation. Are you OK to have that conversation with Rohini or would you rather I have a chat to her?

In need by all means give me a call to discuss, otherwise if you're ok with this approach for now we can cover off in more detail on the 17th?

*Regards
Murray”*

93. I cannot help coming to a conclusion that Mr. Verma was not fit to be continued as a leader of Lotus Fiji. He definitely could not meet the expectation of Mr. Pavin Kumar and Mr. Broadmore. The latter's email shows how patient he can be with staff, how to treat staff politely even when they are leaving and that good attitude is the key to handling matters involving staff. Verma had allowed his personality and love affair to deplete the harmony at employment. He practiced unfairness. He provided an unsafe environment to the workers that was affecting the staff mentally and physically.

94. Another alleged instance of Mr. Verma's improper behaviour was outlined in paragraph 15 of the termination letter.

"During the investigation, we also came across an accusation that you had interviewed a prospective staff Kaveena Gounder at your personal residence prior to formally interviewing her at the head office and eventually offering her the position of Foreign Exchange Consultant at TSB. Whilst there is no allegation of any wrong doing, this behaviour is highly irregular and morally wrong. The phone records show that you called her a number of times, including late at night on the date of the accused event. This is also highly unusual for a male manager to be calling a female prospective staff late at night."

95. Mr. Verma had vehemently denied interviewing Kaveena at his place. I however do not accept his evidence. Mr. Verma has been an evasive, inconsistent and a dishonest witness. His phone calls show that even before Kaveena was employed, Mr. Verma was calling her after official hours. He would call her even around 10pm.

96. The late night phone calls to a prospective employee establishes what Ronil had outlined in his complaint that Varsha said to him that Kaveena was hired to make her jealous. Kaveena had also told Ronil and Mr. Broadmore that she was interviewed at Mr. Verma's residence first. Kaveena also told them that Varsha was very difficult with her.

97. I accept that it is more probable than not that Kaveena was brought in to make Varsha jealous. Varsha did have a breakdown as Ronil's letter of complaint states. This is established by the fact that Verma later fired Kaveena without the approval of the Group Manager and the Managing Director.

98. When Varsha and Verma got back together, Verma had to get rid of Kaveena. He tried to find out ways to do so. He told the court that he fired Kaveena without notice because she answered the phone by saying *"how may I help you"* instead of *"how can I help you"*.

99. I find it outrageous that Mr. Verma would terminate a staff for such a trivial issue, when in fact, Kaveena's mode of answering the phone cannot be faulted. All this establishes that Varsha wanted Mr. Verma to get rid of Kaveena as they had patched up. It also establishes Verma's uncultured nature of not being able to accommodate various working methods of staff and ability to strengthen them given their existing skills. He was indeed an arrogant and a very opinionated man. Mr. Verma once again had let his personal affair creep in business affairs.
100. Paragraph 16 of the letter of termination also accuses Mr. Verma of breaching the confidentiality agreement which he had signed and agreed not to contact anyone whilst he was under investigation. Mr. Verma did not dispute contacting Varsha when he was under investigation. He ought not to have done that. He agreed to that under cross-examination.
101. *Defendant's Exhibit 7* clearly shows that on 22 August 2018, Mr. Pravin Kumar had clearly asked Mr. Verma not to talk to any staff to ensure the integrity of the investigation process.
102. *Defendant's Exhibit 10* is an email dated 28 August 2018 by Mr. Pravin Kumar to Mr. Ajay Verma in which he amongst other things writes "*we ask that you refrain from contacting any staff members in regards to this investigation. We have kept details of this investigation confidential and have asked all staff involved to do the same.*"
103. *Defendant's Exhibit 11* is again an email to Mr. Ajay Verma by Mr. Pravin Kumar dated 30 August 2018. It reads in part:
- "As this is an ongoing investigation, we have requested you to refrain from talking to any staff directly. I would strongly recommend that you follow this to ensure there are no further allegations of interference, intimidation or of any undue pressure on any staff member"*
104. Mr. Verma admittedly breached the directions of the employer not to contact any staff. Varsha was also advised in this case. She was the center of all allegations. She was also Mr. Verma's girlfriend. She could do a lot of damage to the employer if Mr. Verma continued to talk to her.
105. Mr. Verma is also guilty of using internal official documents of the company to further his interest. He somehow got hold of the skype conversation between staff and gave it to his lawyer. He also got Varsha to give him a telephone message between Varsha and a client. He printed that to be used in

the case. This is the reason why he was told not to contact staff. It is probable that all of this was given to him by Varsha as he did not know of Murray Broadmore coming to interview him. He testified to this effect in his evidence in chief. How could he then have access to these documents? He went on leave after Broadmore interviewed him.

106. Mr. Verma then also contacts a former staff, one Dharmendra Krishna and instigates him to report Ronil to the Labour Officer. He said he did this as he felt defamed by Ronil when Ronil complained about him. When asked by Mr. V. Kapadia why he himself could not report, Mr. Verma said that police would need Dharmendra's statement.
107. This was not a police matter. Mr. Verma should not have been contacting people to interfere in the interview process. Ronil was the person who lodged a complaint against Verma. That had caused the employer to start the investigation process. Mr. Verma was vindictive and wanted the complainant Ronil to be reported to the police and the labour department. He wanted the process of the investigation to be weakened as any complainant would not want any unnecessary victimization. Mr. Verma was out to exactly do that even though he was asked not to interfere in the process. His vindictiveness against anyone who challenged him is clearly apparent,
108. Mr. Verma's position is that the employer breached the confidentiality agreement as Ronil had informed Dharmendra Krishna that he had been fired. The worker Mr. Verma cannot blame the employer for breaching the confidentiality agreement. It had taken all precautions it could to inform the staff not to discuss any personal or confidential matters and if they did, it would amount to breach and the staff could face disciplinary action.
109. *Defendant's Exhibit 13* is an internal memorandum from the Operations Manager Mr. Ajay Kumar to all branch staff Fiji wide. It reads:-

"Please be advised that Mr. Ajay Verma is currently on leave until further notice.

You are requested to contact me by email akumar.fj@lotusfx.com or mobile 9921973 for any operational, business or personnel matters.

Please be reminded that any discussion of personal or confidential matters are strictly prohibited as provided for under our code of conduct and anyone found in breach of these rules may face disciplinary action".

110. Mr. Verma is also accused of being in breach of his working hours. His reporting hours is from Monday to Friday from 8.30am to 5pm and 8.30am to 4pm on Saturday. The complaint by the employer is that on weekdays he arrived a few hours late and did not set good examples that would inspire others.
111. Mr. Verma explained that he told Mr. Broadmore that he does not work on Saturdays and Broadmore had agreed to be flexible and had said that Mr. Verma can only hop in the office if he is in town. Mr. Verma also said that Murray said he did not have any issue with when he comes and goes in the week days as long as he does his work.
112. The concern the employer expresses is regarding weekdays and not weekends. Even if I accept that the employer could exercise some flexibility in the weekends, I cannot expect that the employer could exercise the same flexibility in the weekdays. I accept Mr. Broadmore's evidence that Verma was not given any permission to report as and when he wanted on weekdays.
113. There is no express or implied permission of flexible working hours. I accept the evidence of Mr. Broadmore and Mr. Pravin Kumar that Mr. Verma was expected to set example and be at work on time and leave work on time.
114. Mr. Verma was the leader of the Fiji Branch. He needed to oversee the work of the staff. He was paid do work for certain hours. Unless the contract on working hours was varied, which I do not find it was, he was expected to report on and off work as prescribed by the contract.
115. Mr. Verma would come to office as late as 10am. There was an incident referred to in cross examination evidence that he asked the driver Bhim to park the vehicle around 9.41am. This was the time Mr. Verma had arrived at work. Verma said that he covered the shortfall in working hours at lunch time. There is no independent evidence of that. I do not accept Mr. Verma's evidence in this regard.
116. I find that Mr. Verma had breached his contractual term of not working for the period he was paid.
117. The employer had not one but many reasons to terminate the work of the worker. He breached his contract by harassing work colleagues, breached employer's policies and procedures and caused deliberate damage to the employer's reputation by demoralizing staff and instigating former staff to report other staff to Labour Office when the issue was under investigation.

118. I find that the employer had sufficient basis to come to a conclusion that as a result of the worker's conduct there was serious misconduct and that he should be summarily dismissed.

(ii) *What is the procedure prescribed by law for summary dismissal and was that procedure followed by the employer?*

119. I now turn to the next aspect of whether there was procedural fairness when the summary dismissal was carried out. The law provides for the procedure to be followed in summary dismissal cases. An employer is not expected to go beyond that procedure.

120. Under s. 33(1) of the ERA, the worker is entitled to be produced with reasons in writing for the summary dismissal. Under s.34, he is entitled to be paid on dismissal the wages due up to the time of the worker's dismissal. Under s. 30(6), the worker, upon termination of his contract or dismissal, is to be provided by the employer, a certificate of service stating the nature of employment and the period of service.

121. The employer carried out a comprehensive investigation into the alleged wrongdoings of the plaintiff. The plaintiff was also invited to formal meetings with the Group Manager and the Managing Director. All the information uncovered in the investigation was presented to him for his response. After the meetings with the plaintiff, the employer took into account the responses and explanations of the plaintiff including his written response of 7th September 2018 and proceeded to summarily dismiss him.

122. The employer had correctly formed the view that the actions of the plaintiff cumulatively amounted to serious misconduct.

123. The employer was not even obliged to provide the plaintiff with a hearing. I agree with Mr. Kapadia that the law does not require an employer to enter into a formal hearing and engage in protracted findings of facts with the plaintiff before the termination. If this was the case, there is no purpose in providing an employer with a right of summary dismissal. It is necessary and expedient that a worker is removed from employment quickly to avoid further damage, loss or harm to an employer or to its staff.

124. The defendant issued a termination letter dated 11th September 2018 and provided the plaintiff with sufficient reasons why he was being terminated. He was also paid all his wages and benefits up till the date of dismissal.
125. The only overlook by the employer was in not providing the worker with a certificate of service upon dismissal. That is the only procedural flaw. However this only occurred because Mr. Verma in his leadership had not tidied up the exit procedure when employees were terminated.
126. He would fire employees without notice and reasons. He would not inform the Managing Director and/or the Group Manager. He would also fail to provide them with a certificate of service.
127. Even if the termination was not procedurally unjustified for want of a certificate of service, the employer should not be punished with damages as it had already given the worker 1 month's wages which is compensation enough for this procedural overlook.
128. In any event, the absence of a certificate of service did not preclude Mr. Verma from securing work. He found work on 19 March 2019. *Defendant's Exhibit 1* establishes that in no uncertain terms. This is a judgment of the Employment Relations Tribunal between *Ajay Verma v SNP Fiji Limited - ERT Grievance Case No. 72 of 2019*.
129. Verma says that after he left work at SNP Fiji Limited, he could not secure work due to lack of certificate of service. I find his evidence incredible. He was not able to show that he applied for any other work and got rejected for want of a certificate of service. Further, if that was so necessary, he could have at least asked the employer for one. He also needed to mitigate his loss.

B. Unfair Dismissal

130. Verma says that he felt humiliated when he was asked by Mr. Pravin Kumar to wait for the interview. He said that when he was asked to go to the Boardroom, all staff saw him and he felt humiliated. Asking the employee to attend an interview in the Boardroom is not an unwarranted procedure. Verma says that he waited for almost 30 minutes outside the Boardroom. I do not find the waiting period to be oppressive at all.
131. Verma agreed in cross-examination that there was nothing wrong in conducting the interview at the Boardroom. In that process, it was expected that some staff will see him going in and out of the

Boardroom. That could not be avoided. The employer could not stop the staff from looking at Verma and Verma feeling humiliated. It was part of the process that Verma agreed to go through.

132. There is no evidence of the employer conducting itself in a manner that caused the worker humiliation, loss of dignity and injury to his feelings.

Final Orders

133. In the final analysis, I find that the employer had justifiable reasons to terminate the work of the worker. It had followed all the correct procedures except that it overlooked to provide the worker with a certificate of service.
134. Notwithstanding the procedural flaw, I find that any damages for that overlook cannot imposed on the employer. The employer had already paid the worker 1 month's pay in addition to all his dues. This 1 month's pay should be applied as compensation for the omission in providing the certificate of service.
135. The dismissal was fair.
136. The plaintiff's claim is dismissed.
137. I order the plaintiff to pay the defendant costs of the proceedings in the sum of \$5,000 within 3 months.



Hon. Madam Justice Anjala Wati

Judge

25.11.2024

To:

- 1. Oceanica IP for the Plaintiff.***
- 2. Kapadia Lawyers for the Defendant.***
- 3. File: Suva ERCC 28 of 2018***