

**IN THE EMPLOYMENT**

**TRIBUNAL AT SUVA**

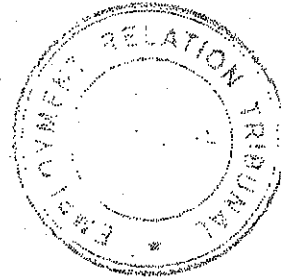
ERT Grievance No. 95 of 2009

**BETWEEN:**            **MRS. SANGITA NAND**

**THE GRIEVOR**

**AND:**                    **POST FIJI LIMITED**

**THE EMPLOYER**



*Appearances:*

*Mr. A. Singh for the Grievor*

*Ms. S. Sharma for the Employer*

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**DETERMINATION OF THE TRIBUNAL**

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**The Employment Relations Problem**

1] The claim by the grievor (Mrs. Sagita Nand) that the employer's (Post Fiji Limited) decision to terminate her on 7<sup>th</sup> May 2009 was unfair and unjustified and that the refusal by the employer to hear her appeal against the termination was in breach of the collective agreement and she therefore seeks reinstatement without loss of benefits.

**References**

2] In this proceeding:

- the grievor Mrs. Sagita Nand shall be referred to as ("SN")
- the employer Post Fiji Limited shall be referred to as ("PFL")
- the Human Resources Officer for PFL Ms. Salaseini Malo shall be referred to as ("SM")
- the immediate supervisor or SN, Jope Rusiate shall be referred to as ("JR")

**Background and Evidence**

3] The brief background to this case as explained by PFL's witnesses was that on Thursday May 7, 2009 JR made a surprise quality check to find out if there was any mis - sort by the sorters at the Mail Centre. JR checked the first panel nos. 16201 - 16300 being done by SN and discovered that 5 overseas mails had been mis-sorted. The matter was reported to Manager Malls who initiated the actions culminating in SN's termination.

4] SM in her evidence gave a history of SN's employment with PFL; that she started as a casual employee before being confirmed as a Permanent Relieving Postal Assistant with effect from 2 April 2008. On the incident that led to the termination of SN, she confirmed it was related to mail tampering and that SN was advised by her

supervisor, Mrs. Temalesi Uluilakeba to go home. Further SM advised that as a Manager, Mrs. Uluilakeba could take such actions. SM described SN to being dishonest, not committed to work, did not follow procedures for doing things and that she had been given a final warning verbally. As to the alleged offence, SM advised that there were investigations done and that SN admitted tampering with the mail. As such there was no disciplinary hearing and SN was summarily dismissed.

5] Under cross examination SM outlined the disciplinary process and that the Disciplinary Committee normally sits but where the offence is straight forward similar to this case it would not. SM told the Tribunal that in this case the decision not to sit was made after consulting the Legal Officer at that particular time. Apart from that SM stated that she was unaware of what else transpired before SN was sent home.

6] Further on cross examination, SM admitted that she drafted both the dismissal letters and the reply to the Union on behalf of SN's appeal. SM further admitted that the right of appeal under the Collective Agreement was denied to SN as her case was straight forward.

7] JR was the immediate supervisor for SN and in his evidence stated that on 7<sup>th</sup> May 2009 he did a quality check at the Mail Centre and when he inspected panel 16201 – 16300 where SN was sorting he found a total of 7 miss sort mails. He confronted SN with his discovery and she admitted the miss sort and told JR that she was sorry, that she would not do it again and that she be given another chance. JR testified that miss sorting of mails; being wrongly placed is tantamount to tampering.

8] Continuing with his evidence, JR clarified that SN was interviewed in the morning and that was done separately with the Managers and he would not know if Mrs. Tema Weleilakeba had yelled at SN to go home. He however, confirmed that SN was sent home after the interview and the letter was written in the afternoon.

9] SN in her evidence read from a statement prepared with the general Secretary of the Union. She related the events of that morning of 7<sup>th</sup> May 2009 when she was sorting mail at the Mail Centre at Laucala Beach Estate. JR came in checking all panels for miss sort mails and was also holding other mails in his hand at that time. SN said that JR found some mis-sort mail on top of her panel and after sorting she came to GPO Suva to sort mail and then returned to the mail centre in the afternoon.

10] SN continued with her evidence and told the Tribunal that at about 4:00 pm one Mr. Fuata asked her to explain the mis-sort mail on top of her panel which JR picked up in the morning. SN told Mr. Fuata that she would be giving a written explanation the next morning as it was already late in the afternoon. It was at that time that Mr. Vincent Singh the acting Manager Mail came in and told SN that Mrs. Tema Weleilakeba wanted to see her. When she went in to her office, Mrs. Weleilakeba told her to leave the premises right away. SN stated that she asked Mrs. Weleilakeba for a chance to explain but she yelled back at her that she would not be given any chance to explain. After that Mr. Fuata came and asked for her keys before she went home.

11] SN told the Tribunal that she was delivered her dismissal letter one week after she had been sent home. She gave the letter to her Union General Secretary and he wrote to PFL appealing the decision to terminate her.

12] SN closed her evidence by confirming that there was no appeal hearing, that she was not interviewed by anyone regarding the mis-sort mail, she was not given a chance to explain and that she did not steal any mail by deliberately putting them in Suva mail panels.

13] Under cross examination SN confirmed that she was sorting mail in panels 16201 to 1640 and that these panels were for Suva mails only and that the mails sorted included those from overseas. The overseas mails sorted by SN

were all from New Zealand and were addressed to people not living in Suva. SN agreed that all mails were to be sorted into their different pigeon holes and maintained that the practice was to put mis-sort mails on top of the panel.

14] Still under cross examination SN admitted that during primary sorting she would know if there was a mis-sort in panel 16201 to 1640. As to the 5 mails highlighted, SN maintained that she was sorting inside the panel and she was responsible in the primary sorting for those mails.

15] When asked why the 5 mails were not put into their respective pigeon holes, SN answered that they were not put into the pigeon holes as they were treated as mis-sorts and were put on top of the panel. SN admitted that there would be mis-sorts as they were very fast in the sorting out process and also they would not inform their immediate supervisor but would leave the mail on top of the panel.

16] When told that the practice of putting mis-sorted mails on top of panels was not allowed, SN replied, that, that was the practice when she was working, and that when her supervisor asked whether she deliberately did the mis-sorting, she denied it and that she also did not ask for a second chance.

17] SN told the Tribunal that she came to Suva GPO from the Mail Center to do sorting after she was confronted on the mis-sort and later returned to the Mail Centre where she was asked to write an explanation letter. SN continued that she had asked to give in a written explanation the next day because her supervisor had alleged that she deliberately mis-sorted mails and also as it was late into the afternoon.

18] As to the summary dismissal letter, SN confirmed receiving it on 12<sup>th</sup> May 2009 but she did not agree to the reasons stated therein like "deliberately misplacing mails and the interview." SN maintained that there was no interview but agreed that there was a surprise check.

19] The issue of final warning was brought up in cross examination and when SN was asked whether she was on final warning during the incident of mis-sorting, she denied that she was ever given any type of final warning; not even by Ms. Temalesi her boss. She was also asked whether she knew that PFL has a zero tolerance level on mails being mis-sorted or tampered with, and she replied that she had no idea of that and also she was not given the Corporate Manual which explains actions of misconduct and gross misconduct. SN however, agreed that it was mis-sorting when she left the mails on top of the panel but she did not deliberately put mails in the wrong panels.

**Analysis and Conclusion**

20] From the evidence, PFL is alleging that there was a malpractice and as a consequence SN was summarily dismissed and in that connection the action taken by Mrs. Weleilakeba was fair and lawful. The issue before the Tribunal is whether the dismissal was *justified*, whether the *procedures* followed by PFL were *proper* and whether SN was accorded *natural justice*.

21] The evidence shows that this case rests on the sorting of mails and what constitutes mis-sorting or tampering. Throughout the evidence, there were 2 opposing views: SN maintained all along that the practice was to put mis-sort mails on top of the panels whilst PFL position through its witness stated that all mis-sort mails to be referred to the supervisor. There was no evidence produced by PFL in the form of a document or otherwise to establish the real or accepted practice and SN in her evidence testified that the practice was to put the mis-sort mails on top of the panels.

22] The Tribunal could visualize the absence of an approved system in place when SN told the Tribunal that JR came to her on 7<sup>th</sup> May 2009 whilst she was sorting and that JR was holding other mails when he picked up miss

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sorted mails from the top of her panels without confronting her about the mis-sorts. SN came to Suva GPO after that and returned to the Mail Centre in the afternoon and this was when Mr. Fuata Kamoe and JR asked her to explain the mis-sort mails on top of her panels and which were picked by JR. Why did PFL take that long before asking SN for an explanation? This kicked started the events of that afternoon when SN told them that she would put in a written explanation the next morning as it was late into the afternoon. Next came one Mr. Vincent apparently sent by Mrs. Welelakeba who wanted to see SN. She went into her office and was yelled at and told to leave the premises right away.

23] There was no opportunity given to SN to explain and from the evidence Mrs. Welelakeba shouted at her saying that she would not be given a chance to explain. This happened when SN was walking out of the office and there was nothing given in evidence for PFL to deny that. The keys were taken from SN and she went home. There was no dismissal letter and no reasons given for the summary dismissal and these were provided 5 days later in the dismissal letter dated 12<sup>th</sup> May 2009.

24] The law in regards to summary dismissal for gross misconduct is provided for in section 33 (1) (a) of the Employment Relations Promulgation 2007 as follows:

*s.33 – (1) No employer may dismiss a worker without notice except in the following circumstances –*

*(a) where a worker is guilty of misconduct.*

*(2) The employer must, provide the worker with reasons, in writing, for the summary dismissal at the time he or she is dismissed.*

25] The law is very clear here in that the guilt of the worker must first be established and how do you do that. Like in other scenarios, the worker must be accorded the due process as this is to the ordinary person, justice. Moreover, under the Employment Relations Promulgation, the basis of worker/ employer relationship is good faith and this extends to the time of dismissal in that the worker should exit the workplace with his or her dignity intact.

26] What the Tribunal is looking at is whether PFL had reasonable grounds for believing that SN had tampered with the mails and whether PFL acted reasonably in dismissing SN for that offence. From the evidence the Tribunal is not satisfied that PFL had made genuine attempts to accord SN all the fair procedures as stipulated in the leading case of NZ Food Processing, IUOW v Unilever. 1NZILR 35;[1990]. It says that the employee must be given:

- *Notice of the specific allegation and its gravity and possible outcome*
- *An opportunity to refute the allegations (with an opportunity to have a representative, not simply a witness, present)*
- *Unbiased consideration of the employee's explanation.*

From the evidence PFL had not given reasonable grounds for believing that SN had tampered with the mails. All it had was the uncorroborated evidence of JR and an undated note signed by JR -and someone else signing on behalf of Mr. Fuata Kamoe the Manager Mail which stipulates the following:

*"When we interviewed Sangita, she said that it was mis-sorted but all these mails were sorted by her from the primary sorting and cleared by her to the new wing rack. After confronting her then she pleaded that we could give*

her another chance which means that she admitted the offence, which she intended to steal these mails whilst sorting in Suva Mail Room at the front loading boxes."

This note was not given much weight by the Tribunal when assessing the evidence before it as SN denied that this interview ever happened. Dealing with this type of situation in Fiji often result in the parties and the employer in particular running into difficulties especially if there is no collective agreement or manual in place which specify procedures on how to deal with grievances, disputes and disciplinary matters. What the Tribunal has done is to rely on New Zealand cases and precedents in view of the genesis of the current law in New Zealand.

27] The Courts in New Zealand have recognized that most employers will not be able to provide perfectly fair procedures for dismissing employees. In BP Oil v NDU [1992] 3 ERNZ 483 (CA): the Court of Appeal said - "The question is essentially whether it was open to a reasonable and fair employer to do so in the circumstances."...In the earlier Unilever's case the Court also said that.. "the employer's conduct of the disciplinary processes is not to be put under a microscope and subjected to pedantic scrutiny."

This means that minor procedural inadequacies should not render a disciplinary action unjustified but in this case PFL's action through Mrs. Welilakeba was uncalled for. Now, nobody has a right to chase anyone from a workplace as there are procedures to be followed.

28] There was nothing presented in evidence that SN was given an opportunity to refute the allegations against her as required in any employment relationship governed by good faith and also there was no evidence that an investigation was ever conducted. The PFL should have done the following:

- (i) Conduct a proper investigation into the alleged wrongdoing.
- (ii) Invite SN to a disciplinary meeting and should be told -
  - All the information that was uncovered in the investigation
  - To bring information of his own
  - That SN can bring a representative or a support person
  - That the outcome of the disciplinary process may be dismissal.
- (iii) At the meeting, PFL should properly explain their information and give SN a chance to respond to it and present her own information.
- (iv) After the meeting, PFL should properly consider all the information with an open mind and inform SN of the decision.

29] From the evidence and submission made the Tribunal is satisfied that SN was not accorded the due process as she was denied the rights to cross examine the people who made the allegations against her and the opportunity to give her account of what happened.

30] Definitely SN's livelihood has been adversely affected and this puts into context the ruling of the Court of Appeal in the case of PSC v Lepani Matea (CA 16/98) where it was upheld that -

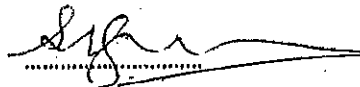
*"The requirement that a person be given a fair opportunity to be heard before a body determines a matter that affects him adversely is so fundamental to any civilized legal system that it is presumed that the legislative body intended that a failure to observe it would render the decision null and void."*

**Decision**

31] SN's dismissal was unfair and unjustified and in that regard the Tribunal makes the following Orders:

- i) Reinstatement to former position or
- ii) Reimbursement of 2 years' wages lost as the result of the grievance.

DATED at Suva this 6<sup>th</sup> day of January 2012



Chief Tribunal

