



## Ex Tempore Decision

**Title of Matter:** Om Prakash (Grievor)  
v  
Fiji Sugar Corporation (Employer)

**Section:** Section 211 *Employment Relations Act 2007*

**Subject:** Determination of grievances  
**Matter Number:** ERT Grievance No. 56 of 2017

**Appearances:** Mr N Tofinga, for the Employer  
Mr A Nair, for the Grievor

**Date of Hearing:** 11 December 2017  
**Before:** Mr Andrew J See, Resident Magistrate  
**Date of Decision:** 11 December 2017

- 
1. This is an employment grievance that has been referred from the Mediation Service to the Employment Tribunal on 21 April 2017.
  2. The grievance arises out of the termination of employment of the Worker on 3 August 2016 where it reads specifically :

*"This is to advise that you have ...failed to comply with the provisions of the employment contract of service, terms and conditions. Despite the attempts by management to contact you and follow up on your whereabouts in order to ascertain the reasons for your absence, you did not show any serious commitment to contact or to meet with management and attend work as required. Further to this you have failed to report to duty in reasonable time as required by management. This is a serious matter as you have failed in your .....responsibilities and trust as an employee of the corporation. Pursuant to Section 10.1.1 of the Contract of Service you have failed to comply with the terms and conditions of your employment contract and have been absent for more than 7 consecutive days. Therefore your actions warrants summary dismissal*

*and as such your employment is terminated under Section 33 (1) (b) of Employment Relations Promulgation 2007 with effect from 28 July 2016."*

3. At the heart of this case, is whether or not the Employer was justified in making this dismissal decision on the basis of the periods of absence of the Worker commencing from 14 July 2016 and going through to 25 July 2016. A table setting out the attendance record and the reasons provided for the absence of the Worker and included within *Summary of Facts* provided by the Employer.
4. What seems to be the case is that on the 14<sup>th</sup> of July 2016, the Worker was provided with approved leave without pay. The reason for that leave provided in the Leave Authority form, says it was on the basis of a family commitment. It is understood from the Submissions of the parties and it is not disputed by the Grievor, that the Grievor himself attended Court on or around that time. Nothing, in particular arises from that fact, though what followed after the 14<sup>th</sup> of July, was a further period of absence on 15<sup>th</sup> of July. The Employer contends that the Grievor was absent without making a leave application. Following that on the days of 16<sup>th</sup> and 17<sup>th</sup> of July, the Worker was not rostered on to work, yet still did not return to work on 18 July, nor did the Worker return to work on the 19<sup>th</sup> of July.
5. On the 18<sup>th</sup> of July, the Employer sent two of his employees to attend the house of the Grievor and to enquire whether he was sick or to understand the reasons for absence. The Employer says that these workers were met by the wife of the Grievor at his family home, and were advised that he was in Ba. Subsequent discussions that were had on the telephone with the Grievor by these workers, led to a situation where the Grievor then claimed that in fact he was at the family home. If that was the case, the Employer was naturally misled by the Grievor and had concerns as to his honesty for why he had been absent from work.
6. The Tribunal accepts that the Grievor did access a medical certificate for 2 days from the 20<sup>th</sup> of July to the 21<sup>st</sup> of July 2016. Though it is not clear at what stage the Worker provided that to the Employer. Ordinarily, if a worker had been absent for such a lengthy period of time, one would have expected that he or she would have made contact with the Employer and advised that he or she was not attending work on those days. That seems to be the preferred way in which sick leave should be taken, that once a person realizes that they aren't going to attend to work, that they should notify the Employer.
7. The Grievor has nonetheless claimed that his mobile phone had no charge and he had no other available means of contacting the Employer on those days. Subsequent to that, on the 22<sup>nd</sup> of July there is contested evidence between the parties in relation or not whether the Worker once arriving back at work, was sent home by a member of the Human Resource team. That still does not explain the further absence that it is alleged by the Employer for the period the 23 of July, 24<sup>th</sup> of July and the 25<sup>th</sup> of July 2016.

8. In relation to the prevailing contractual and statutory obligations that regulate the conduct of the parties in relation to issues of this type, it is noted that within the contract of employment entered between the parties on or around the 27<sup>th</sup> of August 2015, that Clause 10.1 relevantly states:

*"If you are absent from work for a continuous period of 3 working days without notification to and consent from FSC, you shall be deemed to have abandoned and so terminated your employment without notice. FSC shall make reasonable efforts to contact you during the period of absence".*

9. In relation to the Collective Agreement between the *Fiji Sugar Corporation and Sugar Workers Union* that was entered into between the parties on the 9<sup>th</sup> of September 2014, Clause 3 (c) (iii) of that Agreement provides that nothing shall restrict the employer's right of summary dismissal under Section 33 of the Employment Relations Promulgation 2007 for the following reasons and includes habitual or substantial neglect of duties or continual absence from work without the permission of the employer or without any reasonable excuse.
10. Having understood and reviewed the relevant material provided by the parties, the Tribunal is satisfied that there was a case of unexplained and unauthorized absence. There was a continuous period of absence for at least 3 days from the period 15<sup>th</sup> of July 2016 through to the 19<sup>th</sup> of July 2016. And whilst the further period of absence from the 22<sup>nd</sup> of July 2016 through to 25<sup>th</sup> of July was not determinative of the issue, it was also influential in suggesting a cause of conduct that was inconsistent with an ongoing employment relationship.
11. When assessing as to whether a dismissal for the purposes of the current *Employment Relations Act 2007* is justifiable or not, the relevant principles that govern those considerations are set out within the case of *Kumar vs Nanuku Auberge Resort*<sup>1</sup>. What is required there is that the Employer must illustrate why a dismissal decision is justified and that it can be indicated in the decision that is being made.
12. The Tribunal is satisfied that based on the conduct of the Grievor that the dismissal was justified. There was a continuous period of absence for 3 days at least and there was no suitable reason for the absence that was provided by the Grievor.
13. In relation as to whether or not the dismissal was unfair, the Tribunal had had regard to a decision of Her Honour Wati in what is popularly referred to the *Yanuca Island Decision*<sup>2</sup>. In that case, Her Honour sets out the manner in which a dismissal decision is effected that may somehow invoke a claim that the dismissal is in some way unfair. That is, that it has been executed unfairly. There is no evidence before the Tribunal that this present case falls within that category of unfair dismissal.

---

<sup>1</sup> [2017] FJET 2; ERT Grievance 122.2016 (10 February 2017)

<sup>2</sup> *Yanuca Island Ltd v Vatuinaruku* [2017] FJHC 92; ERCA9.2014 (8 February 2017)

14. The Worker has indicated to the Tribunal that he is 40 years of age and is presently engaged in casual employment. The Employer during the course of an attempt to resolve this issue by mediation, had indicated that it would be willing should a situation be available, to allow the Grievor to reapply for employment as and when such vacancy arises.
15. The Tribunal understands that the Employer is still willing to make that offer to the Grievor and would recommend that it does so in writing. Outside of that though, there is no relief that is available to the Grievor in a case of this type. The grievance is therefore dismissed.



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

