

**IN THE EMPLOYMENT RELATIONS TRIBUNAL**

**AT SUVA**

**ERT Grievance Case No.40/2023**

**BETWEEN : ALIPATE QALOMAIWASA**

**Grievor**

**AND : LAND TRANSPORT AUTHORITY**

**Employer**

Appearances:

The Grievor in person

Mr. Chand. K for the Employer

Date of Judgment/ 19 June 2025

DECISION

***KEYWORDS:***

***EMPLOYMENT LAW- GRIEVANCE OF DISADVANTAGE.***

***LEGISLATION:***

***THE EMPLOYMENT RELATIONS ACT 2007***

**Employment Relations Grievance**

This is a grievance that has been referred to the Tribunal from the Mediation Service in accordance with Section 194 (5) of the *Employment Relations Act 2007*. The Grievor stated that he was disadvantaged reason being during suspension his salary was not paid and he is seeking compensation.

***“The grievor claims that he was disadvantaged and therefore he is seeking compensation.”***

The Grievor, Alipate Qalomaiwasa registered his employment grievance against his former Employer, Land Transport Authority, with the Ministry of Employment on 29 March, 2023. The mediation sessions held on 15 May, 2023, 1 June, 2023 and 19 June, 2023, were unsuccessful.

On 21 June, 2023, the employment grievance was referred to the Employment Relations Tribunal for adjudication.

The employment grievance was listed for mention on 3 October, 2023. On that day the parties were directed to file their preliminary submissions within eight weeks and the employment Grievance was listed for mention on 30 November, 2023.

On 30 November, 2023, the Employer was not present and the matter was relisted for mention on 23 January, 2024

On 23 January, 2024 the parties advised the Tribunal that they are ready to take a hearing date. The matter was fixed for hearing on 2 April, 2024 and the parties informed the Tribunal that they intended to call a total of 3 witnesses.

On 2 April, 2024, the hearing date was vacated and the parties advised the Tribunal that they are negotiating for settlement and seeking adjournment and the Grievor is seeking time for a legal representative. The matter was listed for mention on 17 May, 2024.

On 17 May, 2024, the parties advised the Tribunal that settlements was unsuccessful and on that day the parties advised the Tribunal that they do not want to conduct the hearing reason being the Grievor is finding difficulties to engage a legal representative due to financial constraint, but intended to file the closing submissions.

### **The case of the Grievor**

The Grievor (Alipate Qalomaiwasa) claimed that he was employed by the Land Transport Authority sometime in 24 March, 2020 until his employment contract was expired in 2023. The Grievor said that he was appointed as Senior Road Safety Officer and he was based at Valelevu Office. The Grievor said that on 5 July, 2022, he reported to work and he was served with the suspension letter and he was ordered not to enter into the Employers premises, not to carry the duties and not to contact any of the Employers employees

On 5 July, 2022, the Grievor received his suspension letter from the Land Transport Authority and he was alleged for serious misconduct in respect to Soliciting and Accepting Bribery. The grievor stated that he was suspended without pay The Grievor denied the allegation, and the Grievor's suspension letter is as follows;

## **TEMPORARY SUSPENSION PENDING DISCIPLINARY INVESTIGATION**

*Following the complaint received, I am writing to confirm that, as of the date of this letter, you have been suspended from work until further notice pending investigation into a connection to an allegation gross misconduct in respect to **Soliciting and Accepting Bribery**. We reserve the right to change or add to these allegation as appropriate in the light of the investigation.*

*You are suspended without pay and your suspension does not constitute disciplinary action and does Not imply any assumption that you are guilty of any misconduct. We are keep the matter under review And will aim to make period of suspension no longer than necessary. Your suspension may be lifted at any time and with immediate effect.*

*You will continue to be employed by us throughout your suspension and you remain bound by your terms and conditions of employment. In particular, you are reminded that you must not disclose any confidential information, solicit our employee or customers or undertake any other paid employment.*

*You are required to co-operate in our investigation and, may be required to attend the workplace for investigation interviews hearings. However, you are not otherwise required to carry out any of your duties and you should not attend the workplace. You must not communicate with any of our employees, contract or customer. However, you required to be available any workplace queries.*

*Your email account has been suspended and you no longer have access to our computer network.*

*Please read and ensure you understand our Disciplinary Procedure Rules, which are set out in HR Policy. When we have completed the investigation, we will write to confirm whether you will be required to attend a disciplinary hearing. If we consider that there are grounds for disciplinary action we will inform you of those grounds in writing and you will have the opportunity to state your case at the hearing, in accordance with the Disciplinary Procedure.*

*If you know of any documents, witnesses or information that you think will be relevant to the matters under investigation please let me know as soon as possible.*

*If you have any queries about this matter or the terms of your suspension. Please feel free to contact me.*

*Yours sincerely*

*Patrica Vueti*

**ACTING MANAGER HUMAN RESOURECS**

### **The Case of the Employer**

The Employer in its preliminary submissions stated that the Grievor was employed by the Employer in the year 2001 and he had held different positions within the authority. According to the Employer the Grievor had signed a 3 year employment contract commencing on 24 March, 2020 as a Senior Road Safety Officer. Until his contract expired on 23 March 2023.

On 5 July, 2022, the Grievor received a suspension letter from the Acting Manager Human Resources in relation to potential serious misconduct of Soliciting and Accepting Bribery. The Grievor was suspended without pay with immediate effect.

The employer further submits in its closing submission that it was correct to send the Grievor on annual leave and later suspension without pay as it was in accordance with the human resources policy of the employer.

The chief executive officer of the employer may send an employer to whom an allegation is made, on leave without pay as per human resources policy clause 8.8.1.4 The human resources policy only allows the annual leave to be reimbursed to an employee and it does not contain any provision for the reimbursement of the salary of the period of suspension without pay if the employee is found guilty of a misconduct. This is contained in provision 8.8.1.6 (b) (i) of the human resources policy.

The Employer concluded the case making the following documents as exhibits

**E1;** Grievors Temporary Suspension Pending Disciplinary Investigation dated 5 July 2022

**E2;** Grievors statement Form dated 5 August 2022

**E3;** Grievors Investigation Report

**E4;** Memo dated 24 October 2022+

**E5;** Allegation for Soliciting and Accepting an Advantage letter dated 26 January, 2023

**E6;** Internal email from Grievor to Matila Cama dated 30 January 2023

**E7;** Whistle Blowing Policy

**E8;** Lifting of Suspension dated 13 February 2023

**E9;** Appeal Hearing Decision dated 6 March 2023

**E10;** Reimbursement of Salary dated 17 March 2023

**E11;** Land transport Authority Human Resources Policy

## **Analysis and Law**

### **Disadvantage**

Section 4 of the Employment Relations Act 2007 on Interpretation states that, "*employment grievance means a grievance that a worker, may have against the worker's employer or former employer because of the worker's claim that – (b) the worker's employment, or one or more*

*conditions of it, is affected to the worker's disadvantage by some unjustifiable action by the employer;".*

The term disadvantage is not defined by the Employment Relations Act 2007. The ordinary English meaning of the word disadvantage in employment matters, would mean "*that some action taken by your employer was unfair and as a result, you were disadvantaged in your employment in some way*".

The Grievor denied the allegation of soliciting and accepting bribery from one of customer namely Mohammed Shihaab Haashmi and also denied breaching any of the Code of Conduct and Human Resources Policy.

The Grievor admits that Mr. Haashmi had offered him food parcel but he refused to accept it The Grievor further states that Mr. Haasthmi then offered him money if he won't pursue the show cause letter against the Taxi owner. The Grievor said that he warned them that if they were going to offer money, than he would report the matter to the police .

The Grievor further stated that he did not at any point in time did solicited, demanded or requested Mr. Haasthmi nor his father for any money neither did he received or accepted any money from them. As such the Grievor denied the allegation of gross misconduct. The Grievor said that he had carried out his duties in line with the Authority Code of Conduct and the Human Resources Policy.

***8.8.1.3 For allegation received in writing worthy of investigation, the Chief Executive shall advise and direct Manager Audit to conduct an investigation on the allegation who shall than report the findings to Chief Executive. The Chief Executive shall consider the report and forward the same to Manager Human Resources for issuance of allegation letters.***

***8.8.1.4 The Authority may suspend an employee against whom allegation of irregularity or misconduct has been made, pending the outcome of the investigation. During such suspension, the Chief Executive shall determine whether the officer shall be proceeding on annual leave pending investigation or to be on suspension without pay.***

The Tribunal finds that the Acting Manager Human resources was authorised by the Chief Executive Officer to carry out the investigation, but he did not have the powers under the policy to suspend the Grievor without pay or send him on leave.

## ***DISCIPLINARY PROCEDURES***

### ***RECEIPT OF MISCONDUCT ALLEGATIONS***

*An employee(s) of the authority who receives an allegation of misconduct from any other employee (s) shall immediately notify the manager human resource or chief executive in writing, of the receipt of the allegation of misconduct.*

*The manager human resources upon receipt of an allegation in writing shall advise the chief executive on the matter and vice versa, who shall then determine if it is worthy of investigation or not, if the manager human resources deems the allegation not worthy of investigation than this shall be advised to the parties involved, and copy the advice the chief executive for nothing.*

*For allegation received in writing worthy of investigation, the chief executive shall advise and direct manager audit to conduct an investigation on the allegation who shall then report the findings to chief executive, the chief executive shall consider the report and forward the same to manager human resources for issuance of allegation letters.*

*The authority may suspend an employee against whom allegation of irregularity or misconduct has been made, pending the outcome of the investigation. During such suspension, the chief executive shall determine whether the officer shall be proceeding on annual leave pending investigation or to be on suspension without pay.*

***The alleged employee shall be given fourteen (14) days to respond to the allegations; failure to respond within the stipulated timeframe shall be deemed as the employee admitting to being guilty to the allegation and depending on the severity of the misconduct, appropriate penalties shall be imposed.***

*Upon receiving a response to allegation from the alleged employee, the manager human resources shall analyse the resources and the following shall apply;*

*a. if the employee has pleaded guilty to the allegation ;*

***i. where the allegation constitute to a minor misconduct , the employee shall be issued with a first or second warning letter , whichever is applicable and chief executive shall be notified accordingly ;***

*ii. where the allegation constitute to a major misconduct , the employee shall be issued with a final warning letter , demotion in position and salary or termination of employment , whichever is applicable and chief executive shall be noticed accordingly;*

*iii. Where the allegation constitute to gross misconduct, the employee shall be summarily dismissed from employment.*

*b. If the employee in his/her response denies to the allegation, the matter shall be referred to the staff board to convene a face to face interview. Following the interview, a decision shall be finalized and relayed to the officer upon being endorsed by chief executive.*

*i. any employee who has been directed to proceed on annual leave pending investigation and being cleared of the charges laid against the employee following the investigation report shall be reserves all annual leave utilized being for the investigation period.*

*ii. Any offence committed either internally or externally shall instigate disciplinary procedures as outlined above.*

The Tribunal finds that the Employer had breached the disciplinary procedure. As per the disciplinary procedure clause ***the alleged employee shall be given fourteen (14) days to respond to the allegations; failure to respond within the stipulated timeframe shall be deemed as the employee admitting to being guilty to the allegation and depending on the***

**severity of the misconduct, appropriate penalties shall be imposed". (emphasis added).** In this case the Grievor was suspended for 7 months without pay. The Employer did not provide any reason why it took them so long to carry out the said investigation and the Grievor was suspended without pay for 7 months. The Tribunal finds that the suspension was wrong and unlawful reason being the Employer did not comply with the provision of the Human Resources Policy.

*Dear Mr. Koroinamara*

***REVOCATION OF SUSPENSION AND REINSTAMENT OF EMPLOYMENT***

***Re: LIFTING OF SUSPENSION***

*I am writing to inform that your suspension from work has been, lifted. The reason for your suspension was to enable Land Transport Authority to investigate an allegation, which was made against you.*

*The authority has carefully considered the allegation, the evidence in support including the findings and internal disciplinary hearing on 8 February 2023 and noting your admission to the allegation of being verbally offered bribe.*

*The authority has also noted that you failed to declare attempts of being verbally offered bribe from a customer. For this reason, you are hereby issued a 1<sup>st</sup> warning. This will be placed in your Personal file*

*You are to report back to work effectively Wednesday 15<sup>th</sup> February 2023 to the Team leader Enforcement – MR. Suresh Kumar at 8.am*

*I take this opportunity to thank you for your cooperation during the instigation process.*

*Yours faithfully*

.....

*MS. MATILA CAMA*

*Manager Human Resources*

*For Core Management*

The Tribunal is satisfied that the employer has not acted fairly in the manner in which the Grievor was suspended without pay while he was under investigation. The Tribunal also finds that the Grievor was suspended for 7 months without pay for the unsubstantiated evidence against him. According to the employer's investigation report the allegation were unsubstantiated against the Grievor that he was soliciting \$300.00 and accepting an advantage of \$100.00 from the driver of taxi registration number LT 653. The Tribunal has no hesitation in concluding that whilst the facts, if accepted, amounted to misconduct the offence certainly did not constitute serious misconduct,

such as would have entitled an employer to suspend the employee under section 33 of the Employment Relation Act 2007.

The Tribunal considers that this requirement to act in good faith is a term implied by law into certain contracts such as a contract of employment. The Tribunal also considers that the implied requirement to act in good faith extends to acting not only honestly, but also fairly and reasonably.

**NZ Food Processing Union v Unilever NZ Ltd** [1990] 1 NZILR 35, the Court set out the relevant principles. These were:

- *notice to the employee of the specific allegation of misconduct to which the employee must answer and of the likely consequences if the allegation is established;*
- *an opportunity, which must be a real as opposed to a nominal one, for the employee to attempt to refute the allegation or to explain or mitigate their conduct; and*
- *an unbiased consideration of the employee's explanation in the sense that consideration must be free from pre-determination and uninfluenced by irrelevant considerations.*

The Tribunal concludes that the evidence adduced on behalf of the Worker and the Employer established on the balance of probabilities that the Employer had acted in bad faith in taking initial measures which are subject of this Grievances.

The Tribunal is required to determine whether the Grievors suspension from work was either wrong or unfair. It was wrong if it did not comply with the provisions of the Employment Act 2007. The suspension was unfair reason being the Employer did not comply with the provision of the Human Resources Policy. The clause 8.8.1.5 states that *the alleged employee shall be given fourteen (14) days to respond to the allegations; failure to respond within the stipulated time frame shall be deemed as the employee admitting to being guilty to the allegations and depending on the severity of the misconduct, appropriate penalties shall be imposed. (Emphasis added)*. In this case the Grievor did cooperated with the Employer and responded to all the allegations labelled against him within 14 days. The Tribunal finds that the Employer had a right to suspend the worker for investigation, but it has to if it was done in good faith and honesty. In this case the employer took 7 months to make decision. The Employer did not provide any reason why it took 7 months to complete the investigation. The Tribunal finds that each employment grievance which is referred to the Tribunal is difficult and serious. And the decision has significant consequences for the workplace, the Grievor and his family. To ensure that the Tribunal settles the Grievance in a just manner, the evidence, particularly when it is contradictory, must be weighed carefully and responsibly. One way of doing this is to assess *“its harmony with preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions”* (Faryna-v-Chorny [1952].2D.L.R 354 at pages 356-7).

Tribunal finds that the Grievor was sent home and told his family that he no longer has a source of income and how he will provide for the family requires channelling the suspension without proper notice with dignity and respect.

In light of above I cannot imagine the critical moment whether or not he sustained any hurt to his feelings, but in ordinary circumstances, being sent home without pay for 7 months, when the Audit did not obtain any evidence to substantiate the allegation against the Grievor. The Tribunal further finds that the Grievor was shocked that he was given the written warning out of the blue. He had no indication that was about to occur, so was blindsided by it.

This was tested in the 1997 decision of the Supreme Court of Canada in *Wallace v United Grain Growers Ltd.*, [1997] 3 S.C.R. 701 the Court had rejected judicial recognition of *bad faith discharge* either in contract or tort but injected into the employment relationship the requirement of "good faith conduct" at the time of termination, where in passing the Court spoke of "*special relationship*" which governs the parties to an employment relationship. The Court had stated that:-

*"..., at minimum, ... in the course of dismissal employers ought to be candid, reasonable, honest and forthright with their employees and should refrain from engaging in conduct that is unfair or is in bad faith by being, for example, untruthful, misleading or unduly insensitive..." (at page 46).*

However, 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 stated - "*The question is essentially whether it was open to a reasonable and fair employer to do so in the circumstances.*"....

- a. *If the employee has pleaded guilty to the allegation*
- b. *Where the allegations constitute to a minor misconduct, the employee shall be issued with a first or second warning letter, whichever is applicable and Chief Executive shall be notified accordingly;*

The Tribunal finds that the Employer's failure to pay the Grievor for a period he was away from the workplace affected him to his disadvantage and the action was unjustified. However, I felt totally undermined because his character and dedication to his work had been called into question. He described feeling emotionally hurt that all of the valuable and important work he had been doing had not being recognized, acknowledged or appreciated. The Respondent's actions, and how it acted, were not what a fair and reasonable employer could have done in all the circumstances at the time that it issued the warning letter to Grievor, and at the time he was not paid for 7 month while he was suspended from work.

Accordingly, the Tribunal finds that Grievor's suspension without pay from 5 July, 2022 to 13 February, 2023, was wrong and unfair.

## **Final Orders**

- 1 The suspension of the Grievor was unjustified and unfair.

2. The Grievor to be compensated for the period he was suspended without pay from 5 July, 2022 to 13 February, 2023 within 14 days of the decision.
3. Under Section 230 (1) (c) (i) the employer to compensate Mr. Alipate Qalomaiwasa further 1 month compensation for humiliation, loss of dignity and injury to his feelings: within 14 days of the decision:
4. The parties will bear their own cost in this matter.

Dated at Suva this 19 June, 2025.



A handwritten signature in black ink, appearing to read "Aleem Shah", written over a horizontal dotted line.

**Aleem Shah**  
**Legal Tribunal**