**IN THE EMPLOYMENT RELATIONS COURT OF FIJI**

**AT SUVA**

**ORIGINAL JURISDICTION**

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| **CASE NUMBER:** | **ERCC 15 of 2013** |
| **BETWEEN:** | **SANJAY SANDEEP LAL** |
| | **PLAINTIFF** |
| **AND:** | **CARPENTERS FIJI LIMITED** |
| | **DEFENDANT** |
| ***Appearances:*** | ***Mr. S. Bale for the Plaintiff.*** |
| | ***Mr. E. Narayan for the Defendant.*** |
| ***Date/Place of Judgment:*** | ***Friday 10 August 2018 at Suva.*** |
| ***Coram:*** | ***The Hon. Madam Justice Anjala Wati.*** |

# JUDGMENT

A. ***Catchwords:***

***EMPLOYMENT LAW** – Unlawful and Unfair Dismissal– Employment Court's powers to hear actions founded on an employment contract - Whether the matter should have been first referred to the Mediation Unit - Onus and burden of proving that dismissal is fair and lawful - Employee's right to fair employment practices – The duty of good faith - Assessing damages – powers of the court to grant lost wages as damages – assessment of costs.*

B. ***Conventions / Legislation:***

1. *Constitution of Fiji ("CF"): s. 7(2); and 20 (1).*
2. *Employment Relations Act 2007 ("ERA"): ss.30; 33; 34; 110; 114; 194; 211; 220; 230 and 262.*

3. ***Termination of Employment Convention, 1982 (No. 158) ("C158"): Article 9(2).***

C. ***Cases:***

1. ***Food for Less (Fiji) Limited v. Elizabeth Chand [unreported] Civil Appeal No. ABU 0043 of 2016.***

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## *Background/Cause*

1. The plaintiff whom I will also refer to as Sanjay is the former employer of Carpenters Fiji Limited ***("CFL")***. He started employment with CFL since 14 October 1994. He has held various positions in CFL during his employment. He had also been receiving promotions and salary increments for his good performance at employment.

2. On 7 September 2010 Sanjay was appointed the Group Operations Manager ***("GOM")*** for the entire CFL Group. One of his major roles was to ensure reduction in operational costs for the entire Group. The target was cost reduction by $2 million dollars a month.

3. He was still a GOM when he was summarily dismissed from employment on 7 May 2012. It is essential for me to state that his termination came about after two weeks of his wife's termination who worked for CFL as well. His wife was terminated on 26 April 2012. The reason I make this observation at an early stage will be apparent from my findings later.

4. After his wife's termination, Sanjay was questioned on the very next day in an interview on various allegations. He was interviewed twice after which he was dismissed.

5. The grounds for his dismissal are outlined in the dismissal letter issued on 7 May 2012. It is pertinent that the contents of the dismissal letter be reproduced in full as it contains various allegations on various discrepancies alleged to have taken place by the actions and inactions of the plaintiff.

***"As you are aware, the Company's Internal Audit Manager, assisted by the Head of Human Resources and Manager Legal ("the Investigation Team") have been conducting an***

***investigation in relation to reported discrepancies at MHCC Food Court and in relation to certain suppliers of goods and services.***

***In the course of such investigation, evidence has been collated by the Investigation Team from relevant staff members and the pertinent records of the Company.***

***The discrepancies and allegations arising therefrom has been made known to you by the investigation and include:***

1. ***Discrepancies pertaining to and/or arising from catering food ordered, prepared and delivered to you by the MHCC Food Court, at your direction.***

***Particulars***

(i) ***That between January 2011 and April 2012 and on diverse other dates, you ordered or caused to be ordered, prepared and delivered to you and your family "take out" catering food from the Food Court situated at MHCC, Suva ("the said catering food orders");***

(ii) ***The said catering food orders were placed by you at regular periodic weekly intervals between January 2011 and April 2012;***

(iii) ***that the said catering food orders were either not paid for by you or paid for at costs below the normal price for production and selling of such catering food;***

(iv) ***The said catering food orders and sale thereof to you were not supported or substantiated by any documentary material or where such documents existed, they were lacking or deficient in particulars of costs and nature of catering food supplied;***

(v) ***That you knew or ought to have known that procurement by you of catering food from the MHCC Food Court in such circumstances and in absence proper supporting documents was contrary to an in breach of established policies of the Company, such policies being well known to you;***

(vi) ***That you knew or ought to have known that in procuring the catering food in the said circumstances enumerated in (i) to (v) above, would and did result in losses to the Company;***

*(vii) That you did in all the circumstances, use the powers of your office and position as Group Operations Manager to obtain the said benefit flowing from the purchase of the said catering food and which was to the detriment of the company;*

*(viii) That you knew or ought to have known, that in all the circumstances, the subordinate staff of the MHCC Food Court would not and could not question your direction or orders in relation to the said purchase of catering food.*

*2. Discrepancies pertaining to your actively negotiating and/or concluding supply agreements for procurement of goods and services, contrary to the well-established and documented policies of the Company.*

*Particulars*

*(i). Actively participating, negotiating and concluding supply agreements with Grenville ACER (Avery Scales), Vinz Works, Lincoln Refrigeration Ltd, MN Builders, and Ashok Transport in a manner and in circumstances contrary to the express provisions pertaining to written agreements as contained in circular No. 339 dated 11 May 2007 and Capital Expenditure Policy and Procedures Circular No. 272 dated 22 August 1996 (as revised and superseded by Circular No. 353 dated 9th March 2012).*

*The foregoing discrepancies and allegations as identified were put to you by the Investigation Team in the course of the investigation and more particularly, on 27th April 2012 in the presence of other Senior Management of the Company. You were afforded an opportunity to respond, clarify or give such explanation that you deemed relevant. At that meeting, you were also made aware of the evidence collected by the Investigation Team in relation to the allegations and you were accorded an opportunity to comment or respond to the same. You then purported to provide your explanations to the allegations.*

*The Company has very carefully considered the discrepancies and allegations arising there from, the evidence in support, including the findings of the Investigation Team, as well as taken into your account your response and explanations given at the meeting.*

*After a careful consideration of all pertinent matters, including your position as Group Operations Manager, the Company has concluded, that in all the circumstances and based on*

***the foregoing reasons and particulars, you are guilty of gross misconduct and willful disobedience of the policies and procedures of the Company.***

***Accordingly, and for the reasons set out herein, you are dismissed pursuant to Section 33(1) of the Employment Relations Promulgation 2007.***

***Please ensure that all Company assets in your care are to be handed to the Head of Group Human Resources, this includes key to the office, mobile phone and any other Company property.***

***You are also put on notice that the Company reserves all its rights in the matter including instituting such civil/criminal proceedings as it may be advised or deem appropriate.***

***Any salary or other benefits to entitlements due to you will be paid to you (less lawful deductions) in the usual way.***

***We thank you for your services to the Company and wish you well in your future endeavors".***

6. The plaintiff claims that he was unlawfully and unfairly dismissed. It is claimed that CFL did not have proper reasons to terminate the employment and that it did not follow the due process and procedure required to carry out the termination of Sanjay. Sanjay also claims that there was an act of bad faith and that he was victimized at the time of the dismissal. He therefore claims damages arising out of the dismissal.

7. The defendant says that it had lawful reasons to dismiss the plaintiff and that the procedure and process invoked was fair in all the circumstances. There was no bad faith or victimization of the employee when the termination was carried out.

***Issues/Evidence and Analysis***

8. I am required to principally determine whether the dismissal was lawful and fair in the circumstances of this case. In order to determine the lawfulness of the dismissal, I will examine both the reasons and the procedure leading to the termination viz a viz whether the reasons provided for dismissing the employee was proper and lawful and whether the procedure invoked was fair and correct in the circumstances. In

determining whether the termination was fair, I will examine whether the defendant employer acted in good faith and in a manner which was proper and dignified.

9. There is also a preliminary question of jurisdiction that the parties require the court to determine and the question has been framed in the Pre-Trial Conference Minutes ***("PTC")*** as:

***"Should the plaintiff's claim be struck out or stayed on the grounds that the Plaintiff has failed to invoke the employment grievance procedures provided for under the Employment Relations Promulgation 2007?"***

10. There are other specific questions that have been raised in the PTC minutes which can be answered whilst the principal issues are being decided. I will deal with the central issues under various head.

### *A. Jurisdiction of the Employment Relations Court ("ERC")*

11. The Employment Relations Tribunal ***("ERT")*** has jurisdiction under s. 211 (1) (a) of the ERA to adjudicate employment grievances. However its jurisdiction is limited to claims up to $40,000: ***S. 211 (2) (a) of the ERA***.

12. The ERC has powers to hear and determine an action founded on an employment contract and to make any order that the ERT may make under any written law or the law relating to contracts: ***s. 220 (1) (h), (i) of the ERA.***

13. The ERA does not prohibit a claim of this nature to be heard by the ERC. This is very clear in s. 220 of the ERA. At the time of his dismissal, the plaintiff was on an annual net salary of $55,000. He was out of employment for more than a year. The plaintiff had to file his claim in the ERC because his claim for damages is beyond $40,000 which the ERT does not have powers to determine. The claim is good and maintainable in the ERC.

14. The defendant's complaint is that this grievance should have been first referred to the mediation unit for mediation as mandated by s. 110 (3) of the ERA. If the plaintiff

referred his grievance to the mediation unit as suggested by the defendant, then if the matter did not settle in the mediation unit, his cause would be referred to the ERT by virtue of s. 194 (5) of the ERA which states that ***"if a Mediator fails to resolve an employment grievance or an employment dispute, the Mediator shall refer the grievance or dispute to the Employment Tribunal".***

15. Having ended up in the ERT, by virtue of following the requirement in 1. 110 (3) of the ERA, the plaintiff would have found that his claim was not within the ERT's jurisdiction. The claim would have been struck out and he would have to file a fresh action in High Court. That would consume a lot of time and even be an exercise in futility. There may be times when the parties will suffer immense delay in the Tribunal resulting in the claim being caught by the limitation period.

16. I find that s. 110(3) is applicable to cases which are within the ERT's jurisdiction. It is not mandatory for parties who intend to file an action in High Court to go through the mediation unit. It is better that the claim be filed in the ERC if they do not wish to end up in the ERT at the end of the day. In the ERC, if the parties are interested in mediation and they feel that the matter is one that needs to be referred for mediation then an application to refer the same to Fiji Mediation Centre can be made.

17. The defendant's counsel has never expressed any need for mediation in this case or even moved for one. I do not think that the process of referring the matter to the mediation unit would have made changes to the parties' position and that the lack of it prejudices the defendant's position.

18. The defendant's counsel has also raised the issue of time limitation in his closing submissions. It was raised that this action is time barred under s. 262 of the ERA in that the claim should have been filed within 12 months from the date of termination.

19. S. 262 is a provision on offences against ERA. I fail to see how this provision applies to a claim founded in an employment contract. This is not a proceeding for offence against the ERA and s. 262 is not applicable.

20. I will now deal with the issue of the lawfulness of the dismissal. However before I do that, it is very important that I deal with the aspect of the onus and burden of proof.

### *B. Onus and Burden of Proof*

21. The ERA does not make any reference on who bears the onus of proving that the termination of an employee is justified. Fiji has always followed the international standard on the subject specified in *Article 9 (2) (a) and (b) of C158.*

22. Article 9 (2) reads:

***"In order for the worker not to have to bear alone the burden of proving that the termination was not justified, …the Convention shall provide for one or the other or both of the following possibilities:***

***(a) the burden of proving the existence of a valid reason for the termination…shall rest on the employer;***

***(b) the bodies…shall be empowered to reach a conclusion on the reason for the termination having regard to the evidence provided by the parties and according to procedures provided for by national law and practice".***

23. Fiji has not ratified the Convention but by virtue of s. 7 of the Constitution of Fiji, international law can be applied at home as long as it does not stand inconsistent to the domestic legislation. S. 7(1) (b) states that ***"…, a court, may, if relevant, consider international law, applicable to the protection of the rights and freedoms in this Chapter".***

24. Right to fair employment practice is guaranteed by s. 20(1) of the Constitution of Fiji. It provides that every person has the right to fair employment practices and in order to determine whether the plaintiff had been granted his fair rights as provided for under the CF, it has to be determined whether he was dismissed for valid reasons.

25. I will therefore have to make findings on the evidence available before the court on whether the employer had valid reasons and followed proper procedure to terminate the employment of the plaintiff. I will also, given the evidence, make a finding of whether the manner in which the termination was carried out was fair. This will be assessed on a civil standard of balance of probability.

26. I will now deal with the question of the lawfulness of the termination. Under this head I will first determine the reasons for the termination and whether they were proper.

### *C. Was the dismissal lawful for proper reasons?*

#### *1. MHCC Food Court Discrepancies*

27. It is clear in the letter of termination that the plaintiff was terminated pursuant to s.33 (1) of the ERA for gross misconduct and willful disobedience of the policies and procedures of CFL. S. 33 (1) (a) and (b) of the ERA states that no employer may dismiss a worker without notice except where a worker is guilty of gross misconduct or for willful disobedience to lawful orders given by the employer.

28. There are various allegations the plaintiff in respect of the food court discrepancies. I will summarize it as follows:

    a. ***That the plaintiff did not have authority to order food on credit. Although there is no specific allegation which can be identified from the termination letter, the tenor of the evidence and allegations at the trial were also along such powers to order food on credit. The allegations in No. 1 (i) and (ii) in the termination letter which I have cited in full above contains specific allegations that the plaintiff used to order food. I take this to amount to ordering food without authority.***

    b. ***That the plaintiff either did not pay for the food or paid for the same below the costs. This incorporates allegations in No. 1 (iii), (vi), (vii) and (viii) of the termination letter.***

***c. That there were no proper documentation or where the documentation existed, it lacked material particulars of costs and the nature of catering supplied. This covers allegations in No. 1 (iv) and (v) of the termination letter.***

29. The plaintiff admits that between the period January 2011 and April 2012 he had ordered food from the food court on 5 to 7 separate occasions and that on each occasion he paid for the food at full and normal cost either by cash or his carpenters retail card account number 417466-02 and that the payments can be verified by either the plaintiff's card statement, the point of sale (POS) receipts, or CFL's F03 credit sale dockets. All these information are readily available to the defendant.

30. According to the plaintiff, he would place his orders by calling the MHCC Supermarket Manager Mr. Nilesh Kumar who would then organize the order and delivery of the food through the food court. On each occasion, the plaintiff says that he would be issued with an invoice or alternatively he would approach the food court directly and ask for the balance on his account and pay for whatever he was told to pay. He was always careful to follow the existing procedures and that proper documentation was available. He did not abuse his powers at any time. Let me deal with each allegation in turn and the first one is ordering food on credit without authority.

***(i). Ordering food on credit without authority***

31. Sanjay's evidence was that he was the GOM of CFL and there were other people in the senior position who were ordering food on credit and paying later. He named a few people to be ordering food on credit and they were Daniel Whippy, Kunasila, and Ameer Hussein and Captain Rufuz.

32. CFL's witness Mr. Asitha Sanjaya Sunnadeniya ***("Asitha")*** who is the Financial Controller of CFL also gave evidence. His evidence was that in August or September 2011 he reviewed the profitability of the food courts and the bakery and he found that there was an issue with MH Food Court. He questioned that and was told that Sanjay used to order food and not pay for the same.

33. What intrigues me is that Asitha said that MHCC food court had profitability issues but the total amount of the allegations in terms of monetary discrepancies against the plaintiff is only $255. I am surprised that this amount affected the profit level of the defendant company.

34. Asitha did not take any actions then. He said he did not want the staff to be affected as the plaintiff was acting that he was on *"top of everything" (meaning that he controlled CFL)*. If Asitha was aware of the discrepancies, it was his duty as a financial controller to raise the matter then. He did not do so because I find he did not see anything wrong with ordering food on credit as this was a common practice to his knowledge and those who did order were expected to pay the money.

35. This also substantiates the plaintiff's evidence that he only got targeted when his wife was terminated from employment. He then was under attack from various personnel in CFL as this was seen as the opportunity to remove him from employment because he was holding one of the superior positions and was dealing directly with Sir Morgan based in Kuala Lumpur. Asitha admitted in his evidence that when Sanjay's wife was terminated then he highlighted this matter to Pawan Sharma who headed the audit team.

36. I also refer to the second document in DEx-1 appearing on page 142 of Volume ***("Vol.")*** 1 of the defendant's bundle of documents ***("DBD")***. The document is a tax invoice dated 9 April 2012. The document shows some amendments. It shows that the person to whom food was to be delivered was Ameer Hussein. Ameer's name was crossed and the plaintiff's name was written on it. The document is a Fo3 document which according to the evidence is a credit sale invoice.

37. The plaintiff gave evidence that when he was at the food court premises with Mr. Uday Narayan, he questioned whether he had any outstanding bills and was told that there was none. He then informed the food court that he has bills outstanding for cooking a chicken and roti. The food court responded that it was Ameer Hussein's bill but he corrected the food court and informed that that was his bill.

38. From this particular document and the evidence of the plaintiff I find that Sanjay was not the only one who used to take food on credit. There were others in the senior position who used to follow the same practice. Otherwise no one would initially write Ameer's name if he never ordered food on credit.

39. I find that there was no policy in the food court against giving senior management food on credit as long as the bill was paid. The defendant attempted to rely on Circular No. 188 dated 17 February 1981 which is a policy on documentation of goods and this appears on Tab 13, page 17 of Vol. 1 of the DBD. This document addresses some issues about taking goods on loan and the type of documentation that should be given to the purchaser(s). In particular, it states that if a customer purchases goods, he must be either given a cash sale docket, a C.O.D docket, or a credit sale invoice. It also prohibits goods on loan unless it is in the interest of CFL to do so. The policy directs that the process to be followed is that goods on loan can be supplied to a customer who has an authorized credit account for which a credit sale invoice must be prepared.

40. According to the plaintiff this policy was never given to him and I accept his evidence that it was not. There is no evidence by CFL that the plaintiff was given this policy or was made aware of it. It only speculates that the plaintiff has knowledge of it or ought to know about it.

41. This is a 1981 document and the whole tenor of it does not apply to food court and CFL's staff. There is nothing in this circular which would satisfy me that it applies to the matter at hand and I reject this document as irrelevant and inapplicable to the matter before me. Even if this is applicable, the plaintiff ought to have been given a copy and made to sign the same.

42. Asitha said in his evidence that the plaintiff has no authority to take the goods on credit but agreed that Sanjay had a *moneylink* card which allowed him to use the F03 system. His own evidence indicates that F03 is used for credit sale. In that regard his evidence that Sanjay cannot take food on credit is contradictory which I resolve in favour of the plaintiff.

43. In his cross-examination evidence, Asitha testified that he knows of two other people who took food on credit. One was Mr. Daniel Whippy who would provide his moneylink number and the other was Kunasila who would either pay same day or next day. I find that if other senior managers were following this practice, one cannot say that there was prohibition.

44. The other witness of CFL Mr. Nilesh Kumar who is the Operations Manager of MH Supermarket and was a Store Manager of MH Superfresh at the time when the plaintiff was the GOM testified that no one else took food on credit. He stated that he knows that one of the directors Kunasila would buy food from MH Superfresh and paid for it before he walked out of the store.

45. Nilesh's evidence is contrary to Asitha's evidence that there were some people who bought food on credit. I resolve this contradiction in favour of the plaintiff. CFL has not shown to me any policy of the food court which prohibits buying on credit internally. It has hundreds of policies in writing regarding various matters. If Asitha knew that buying food on credit was prevalent, he should have informed those in authority for a proper policy to be issued.

46. There is no evidence by any witness that the plaintiff was told that buying food on credit was prohibited and that he would not be given food in that manner. If he was informed of that and he still pushed his authority that would amount to abuse of office and actions were necessary against him. In the circumstances however, I do not find that his actions in this regard amounts to gross misconduct or willful disobedience of CFL's policies.

47. I find that CFL's allegation that Sanjay was not allowed to purchase food on credit to be baseless and vindictiveness on its part which cropped up when his wife was terminated and CFL decided to find something against the plaintiff to justify the removal.

***(ii). Non/Under Payment of Food Bills***

48. The second limb of the allegation relates to non-payment of the bills. The first evidence that was tendered by the defendant in this respect was DEx- 1 which was a credit sale invoice. The defendant claims this to be an unpaid invoice. The food was ordered on 11 March 2012 for an amount of $165. The plaintiff does not deny that he bought food but he says that he has paid for the same and that the credit sale docket shows that it has been paid.

49. I accept the evidence of the plaintiff without any reservations that the credit sale docket also shows a date as 13 March 2012 and a number noted as 64128. It also has a name on it as *"Atish"*. I accept that this invoice was fully paid. It also appears from the explanatory notes attached to the credit sale invoices of the food court that one Atish claims that this invoice was paid for by Sanjay. This is CFL's document on which it did not attach any weight to during the investigation or the trial as it negates its position and supports that of the plaintiff.

50. I also accept the evidence of the plaintiff that the point of sale system would show how the payment was made, when it was made and that he does not have hard copies of any verification for payment. CFL did not grant the plaintiff any opportunity to verify these details from its system. There is therefore no mode left for the plaintiff to verify these allegations but to depend on the notes endorsed on the credit sales invoice.

51. In respect of DEx-1, Asitha stated that he cannot comment on what No. 64128 stands for. He does not refute that it could be a receipt number. What he says is that receipts issued at the POS have 11 digits. He does not refute that No. 64128 could be the last five digits of the 11 digits or a transaction showing payments. His evidence that this receipt has not been paid for is rejected as there is no conviction and evidence shown on his part that the sum of $165.00 remains unpaid. From the endorsements in this exhibit, I do not find that CFL has been able to establish that the amount on the food bill is outstanding.

52. The second evidence that was tendered was still part of DEx -1 and that is a credit sale invoice dated 9 April 2012 for an amount of $11.00. The defendant claims that the

amount remains unpaid. The plaintiff said it was paid as the endorsement on the invoice has an alphabet R and close to 11 digit numbers following it. The date is 13 April 2012. This shows that the money was paid on that date.

53. Asitha testified that he cannot say what the letter R stands for. He testified that he could not say whether it could be a receipt number. In cross – examination however he stated that it could be a receipt number for Morris Hedstrom.

54. I accept the plaintiff's evidence that in absence of information produced from CFL's system, the only evidence is the 9 April 2012 invoice and the comments by someone from CFL which accompanied the invoice. The credit sale docket also shows a date which is 4 days away from the date of purchase being 13 April 2012. This shows that some transaction took place on 13 April 2012 and that transaction in my finding can only be, in absence of any explanation, the payment date for the invoice. Even the explanatory notes attached to the invoices and appearing at 140 of Vol. 1 of the DBD indicates that one Atish had verified that the invoices had been paid for.

55. In light of the uncertainty and the fact that termination was based on this issue as well, it was the duty of the defendant to produce a computer generated report on what transactions remained outstanding as the plaintiff kept insisting that CFL should check his retail account or point of sale system. Despite that CFL failed to produce satisfactory evidence to this effect.

56. In respect of this invoice, the plaintiff was also questioned about the correctness of having a live chicken cooked in the food court and put under a new allegation that he acted improperly by allowing a live chicken to be cooked. This allegation was not the basis upon which the termination occurred. Mr. Pawan Sharma had confirmed this in his evidence. He said very clearly that although Sanjay was questioned on this during his interview, this issue was not the basis upon which termination was decided. I am surprised that Mr. E. Narayan, counsel for CFL chose to maintain his questions along these lines and took some time around the issue. Trials should not be unnecessarily

prolonged on unnecessary issues because at the end of the day, the issue of costs would also take into account the length of the trial period.

57. In my findings it is improper for the defendant to rely on matters based on which the termination did not occur. It had made specific findings of misconduct based on which the termination of the plaintiff occurred. It cannot use extraneous matters and conduct of the plaintiff outside the termination letter to justify the dismissal.

58. There is a reason why s. 33 of the ERA requires that a person who is summarily dismissed is informed of the reasons in writing of the dismissal at the time of the dismissal. This is one of the procedures required for summary dismissal which I will outline in detail later on.

59. The reason for this procedure is that the employee who has been terminated for a cause knows of the allegations and basis of the termination and not made to walk away in the dark speculating what wrong he or she has committed. That is mentally draining and traumatic to any employee. This also amounts to unfair employment practice.

60. If CFL chooses to rely on reasons not based upon which it terminated the employee then it will automatically be breaching a required procedure in law of outlining the reasons for termination because the letter of termination does not make any allegation of the plaintiff cooking live chicken in food court.

61. I also find that if cooking of the live chicken was not permitted because it compromised the health and hygiene issues of the food court, then it was the duty of the food court supervisor to refuse to kill and cook a live chicken. That is a serious breach of procedure for which the supervisor is answerable. I do not accept that orders were followed out of fear of Sanjay who was in a position of authority. There is no direct evidence of this by anyone who suffered duress at the hands of Sanjay. Other witnesses who gave evidence of duress did not say that Sanjay invoked similar behavior on them but it was said in the defendant's evidence and an allegation has been made in the termination letter that staff did not question him because of his superior position. It is not possible

for others to speak of duress suffered by someone else. The people who had been victimized should give direct evidence for the same to be tested.

62. There is no reason why the employees who had been victimized could not testify in court. No evidence was offered why they were not produced in court despite the serious allegation against the plaintiff. I am not satisfied that Sanjay had intimidated staff and directed them to do what he wished.

63. The third invoice was another credit sale invoice which forms part of DEx- 1. The invoice is dated 14 April 2012 and is for an amount of $79.00. This invoice, unlike the other two does not show any other transaction date or any other receipt numbers. Based on this the defendant's counsel asserted that there was no payment. If the defendant adopts this position, then its argument that the endorsements on the other two receipts are not transactions of payments really lacks cogency.

64. Asitha gave evidence that this invoice does not have any receipt or r/r numbers and so this remains outstanding. I do not accept that this invoice does not show any transaction of payment. The payment portion has the name of one Atish. This portion indicates that the signature has to be verified with that on card. It appears and I find in favour of the plaintiff that Atish had accepted the card and verified the signature of the plaintiff. The internal notes of CFL also indicate that one Atish had verified that payments had been made.

65. I further repeat that it is for CFL to prove from its system and data existing in food court that some orders have not been paid for by the plaintiff. The plaintiff is not expected to be ready with the evidence as this exists with the defendant and not the plaintiff. The defendant has not allowed the plaintiff access to its system, nor has it provided information from its system that monies are due and owing.

66. Even if the invoice is outstanding, the plaintiff ought to have been asked for payment or since he was working, his wages applied towards the arrears after proper notification

was given to him. This was not an act which amounted to such gross misconduct that termination should occur.

67. I now turn to the allegation that the plaintiff was not paying the correct amount and was paying less than he was ordering for. D Ex- 1 was used in evidence. The exhibit was the invoice dated 9 April 2012 which shows that the cooking charge for cooking a chicken was $5.00. The defendant alleges that this was not the proper amount but does not say what should be the proper amount for cooking a chicken provided by the plaintiff. In absence of what is the proper charge for cooking a chicken supplied by the plaintiff, how can termination of a long standing employee of the defendant company be justified?

68. This is the same invoice which initially had Ameer Hussein's name written and later amended to indicate the plaintiff's name at the plaintiff's insistence. This exhibit also affects the defendant's evidence that cooking charges at $5.00 is low when everyone else was being billed for the same amount. If Ameer Hussein was going to be charged $5.00 for cooking charges on this invoice which was later amended, how the plaintiff could be terminated on this does not justify misconduct.

69. I accept the evidence of the plaintiff that that is what he was charged for and that Atish being the food court supervisor had told him that little ingredients were used so that would be the proper charge.

70. There is no other evidence of the plaintiff not paying the correct amount of the bill. There is also no evidence that he influenced anyone not to charge him the proper costs.

***(iii). Deficient/Improper/No Documentation for Food on Credit***

71. The nature of the allegation under this head is that proper documentation was not used to send goods out of the store and reference is made to page 144 of Vol. 1 of the DBD which is part of DEx-1. Asitha said that a F03 document should be used and not a document of this nature. He however admitted upon the questioning by the court that for this delivery there exists a F03 on page 142 of Vol. 1 of the DBD.

72. First an allegation of this nature was not made out and secondly I cannot fathom why the defendant is blaming the plaintiff for not using proper documentation when the responsibility lay with the food court department to issue proper documents. This was also admitted by the defendant's witness that costing and documentation is not the responsibility of Sanjay but that of the food court. There is no evidence that Sanjay had forced anyone not to fill or produce correct documents or no documents at all.

73. It is clear from the evidence of the plaintiff and Nilesh Kumar that the plaintiff would call Nilesh Kumar to place orders for the food. Nilesh also stated that he would sometimes tell the kitchen what to cook or ask the food court manager to take the plaintiff's orders. If the plaintiff wanted to intimidate the staff, he would not contact the senior person but would go directly to the staff and make use of his authority. I accept the plaintiff's evidence that he did not directly liaise with the staff and that the allegation that he misused his powers and office is baseless. Even if there was any communication with the staff, there is no evidence of any duress. Mr. Pawan Sharma stated that he had been informed by the staff that food was supplied and no documents made as no one wanted to question the plaintiff. There is no evidence from any staff that he or she had been intimidated or felt fear when Sanjay was around or that he ask for food free of costs. To speculate that Sanjay would do this shows malice on part of senior management to presume existence of issues against him.

74. Succinctly, I do not find that the allegations against the plaintiff in respect of the food court discrepancies has been made out and that the actions of the plaintiff amounts to misconduct or willful disobedience of the practice and policy of the defendant company.

### *2. Granville Acer/Lincoln Refrigeration Discrepancies*

75. The defendant's general allegation is that the plaintiff actively negotiated and or concluded supply agreements with Granville Acer and Lincoln Refrigeration for procurement of goods and services contrary to the express, well-established and documented policies being Capital Expenditure Policy and Procedures Circular No. 353

of 9 March 2012 (***"Capex Policy")*** and the policy pertaining to written agreements as contained in Circular 339 dated 11 May 2007.

76. The plaintiff's general position is that McAlpine Hussmann Limited supplied and installed refrigerators in all MH branches in Fiji. This is a company in NZ and it had initially appointed a local agent to be the ongoing service provider. The agent it had appointed was Lincoln Refrigeration. CFL had ongoing problems with the existing service provider Lincoln Refrigeration. As a result of that, negotiations took place to secure a new service provider. A meeting was held and relevant personnel from MH Supermarket and McAlpine Hussmann took part. From CFL's side, the people who attended the meeting were Mr. Uday Narayan and the plaintiff. One Ian Ramsay being the representative of McAlpine Hussmann and representatives of Granville Acer were also present. It was decided in the meeting that Granville Acer would be the new local agents for McAlpine Hussmann. The decision was taken by Ian Ramsay of McAlpine.

77. The plaintiff says that after a successful trial period, Mr. Ian Ramsay recommended Granville Acer as the most suitable service provider to replace Lincoln Refrigeration. It is the plaintiff's position that due to the ongoing problems, a collective decision was made in the best interests of CFL. The intention was to secure a more reliable service provider. The plaintiff says that he did not sign the agreement with Granville Acer on behalf of the defendant. It was Ian Ramsay who did so. This is indeed correct and substantiated by the contract which appears on page 511 of Vol. 3 of the DBD. Mr. Pawan Sharma said that there was no document to this effect is clearly incorrect.

78. Having briefly stated the position of the parties generally, I will deal with the two important documents to which reference was made in respect of almost all the issues. The first document is the capex policy and the second document is the authority levels guideline.

79. The capex policy was tendered in evidence as DEx-18 and this appears on page 1089 of Vol. 4 of the DBD. The issues that were in contention in regards this policy were:

***(i). Whether the plaintiff was given a copy of this policy or made aware of its contents through some other means?***

***(ii). What is capex approval and does the policy state who is to seek the capex approval?***

80. The plaintiff says that he has never seen or has been shown or made aware of the capex policy document which he is accused of breaching. If he had seen or received it, he would have signed for it. However, since he has been looking after the accounting section before, he knows the capex procedure from practice. He stated that in May 2006 he was trained by the then Financial Controller Mr. Naushad Ali. He was told by Naushad that any expenditure under assets for a sum more than $500 has to be sent to the Group Financial Controller to obtain capex approval.

81. The plaintiff also testified that CFL has so many policies and there are only 5 or 10 per cent of the people who know about all the policies. CFL does not bind its policies and gives it to staff. Human Resources Department is expected to know of these policies and not all the staff. It was also stated by the plaintiff that at group level, the Financial Controllers or the General Managers would have those documents but none was given to him or shown to him.

82. What is very clear is that there is no evidence that the capex policy document was given to the plaintiff or the full contents of it made known to the plaintiff. The defendant's assertion that the plaintiff would have been given a copy or ought to know about it is best described as speculation in nature which I reject over plaintiff's evidence. I however accept that certain transactions required capex approval and the plaintiff was fully aware which these transactions were. In particular, he was aware that any expenditure above $500.00 needed capex approval and that he knew it from his past practice. This policy, I accept applied to him when he was not the GOM. After his acquiring this position, his authority level changed and so did his powers to approve transaction for certain matters which I will deal specifically when the need arises.

83. It is also very clear from the evidence of the plaintiff and Sherine Chand from cost control center that their department did not have the responsibility of obtaining capex approval. The duty of cost control center was to check, verify, renegotiate prices and approve the payments. The transaction, if it needed capex approval, was the responsibility of the financial controller of the division. Mr. Pawan Sharma's evidence that cost control center should seek capex approval is not substantiated by any policy or documentation. He chooses to say this because there is nothing else on which the plaintiff can be maliciously pinned. The tenor of Mr. Pawan Sharma's evidence indicated to me that when the plaintiff's wife was terminated, CFL did not require the plaintiff anymore and that he had to be blamed for everyone else's work and errors. In my finding, Mr. Pawan Sharma's evidence was not fair and independent and was tainted by his desire to protect the position of CFL when nothing less than independence was expected of a Human Resources Leader. This was very clear from his demeanour and deportment whilst giving evidence.

84. I refer to the job description ***("JD")*** of the plaintiff which was prepared by Sanjay and referred to in evidence. It appears on Tab 9 of the DBD. That bundle does not have a volume number. The defendant has never provided to the plaintiff his JD or any written document specifying his role, responsibility and powers despite the promise to do so by letters dated 19 August 2010 and 7 September 2010. In those letters which appears on the same bundle of documents it is promised that ***"updated job description shall be devised in consultation with you and formalized in due course".***

85. What is bothering is that despite its failure to provide the plaintiff of a detailed job description, he is continually being accused of authorizing certain works and carrying out certain functions without authority. This can be best described as ***"shooting in the dark"*** by CFL. The plaintiff did best what he interpreted his role required of him. The JD prepared by him states that the function of the position was to ***"minimize and control the whole groups overhead. Aim is to bring the overhead by $5m/month"***. The JD also outlines the duties and responsibilities and itemizes the same as follows:

***"– Look into each and every type of expense to be incurred by the divisions, negotiate prices and give approval to proceed.***

- ***Keep a track of savings report.***

-***Look into each and every area of overhead, see what and how we can revise the charges at group level".***

86. The plaintiff's JD, which was initially handwritten by him was produced in a computer generated form by the defendant, does not require him to obtain capex approval in respect of any transaction. If CFL wanted the plaintiff to perform this task, it should have included this in the JD.

87. I have also read the capex policy carefully. The policy does not by any means bestow the responsibility on the plaintiff or the cost control center to obtain capex approval. Any allegation against him that he has failed to submit the documents for capex approval is therefore baseless.

88. The Authority Levels Guidelines Document No. 004/08 dated 22 August 2008 was tendered in evidence as DEx-2 and it appears on Tab 50 page 1081 of Vol. 4 of the DBD. The two general issues that arises from this document are:

***(i) Whether the plaintiff was given a copy of this document or made aware or known about it?; and***

***(ii) Where does the plaintiff's position as GOM fit in in clause 1 of the agreement titled "Approval Signatories Panel"?***

89. I will first answer the issue whether the plaintiff was given a copy of this document or made known about it. This document came in existence before the plaintiff was appointed the GOM. There is no evidence from any party that before the plaintiff was appointed to this position he was in a position of a signatory too.

90. After the plaintiff was appointed to the position of GOM, or even before that, his evidence is that he was never given this document or shown a copy. The defendant's

position is nothing but mere speculation that he would have received a copy and he knows or ought to know about it. Mr. Pawan Sharma who is the head of human resources says that the plaintiff would have been given a copy and ought to know about this policy, in my finding, gave this statement to protect the position of the defendant company. His evidence cannot be fairly relied on. The tone of Mr. Sharma's evidence was that he believes in things done in writing and he said this when he made allegations against the plaintiff as per the termination letter. If this is the stance he had taken all along, then it was his duty as the head of the human resources to keep proper documentations of policies given to all staff. I do not find from the evidence that this policy was given to the plaintiff or explained to him.

91. I now turn to the issue of where the plaintiff sits in the signatories' structure. DEx-2 in clause one classifies different positions as signatories for different tasks. That document contains the financial transactions which could be approved by people in different authorities. The group is identified in the table appearing in the following form:

| *Group* | *Signatories* |
|---|---|
| *KL* | *Group CEO, Group MD.* |
| *A* | *Managing Director* |
| *B* | *Group Financial Controller* |
| *C* | *General Manager – Carpenters Finance* |
| *D* | *Divisional General Managers, Divisional Financial Controllers, Group IT Manager, Corporate Secretary.* |
| *E* | *Category Managers, National Managers, Administration Managers, Accountants, Merchandise Managers, Operations Managers.* |
| *F* | *Buyers, Department Managers/Supervisors, Credit Managers.* |

92. The defendant's witnesses testified that the plaintiff fell in category E above but the plaintiff insists that since he was the group operations manager his category would be above general managers.

93. I agree with the plaintiff that he would not fall in the category of general managers and would be above the category of general manager for carpenters finance. Whatever is the correct position, DEx- 2 is a very confusing document and there is no clear explanation of what the plaintiff's financial authority level was. Everyone seems to be making wild guesses as to where the plaintiff sits in the structure.

94. The plaintiff was always advised that he was the head of costs control and no specific limitations on his financial powers to save operational costs were placed or set.

95. The plaintiff's position was that of a Group Operations Manager and in his capacity as such, it is not disputed that he was bestowed with the responsibility to ensure that the company saved costs of its operation. I accept his evidence that in his capacity as such he had the authority to authorize urgent works to ensure that the company did not undergo additional costs as a result of some fault in the system.

96. Further, the authority levels guidelines is a 2008 document which does not make any provision for the work of a GOM which position was acquired by the plaintiff in 2010. Without him being advised clearly of his position, I find the witnesses' interpretation as to where he should be placed is expressing an opinion to which I cannot attach weight to.

97. I will now turn to the specifics of the allegations against the plaintiff in respect of the discrepancies relating to Granville Acer and Lincoln Refrigeration. I must make it clear that the allegations that I will deal with are the ones that was addressed with the plaintiff specifically and not ones which he was not given a fair opportunity to comment on.

98. The first allegation arises from DEx - 5 which appears in Vo. 2 of the DBD (pgs. 239-251). The first document in DEx-5 is an invoice number 21338 dated 29 August 2011 for an amount of $3500. The nature of the work done was to "*overhaul compressor - MHCC frozen department".*

99. The allegation against the plaintiff is that he authorized the payment of this invoice without capex approval. Mr. Asitha did not say that this order did not have capex approval. This is very confusing because there is no evidence of whether capex approval existed or not. I am therefore not satisfied that the defendant has any basis to make such allegations without any concrete evidence that the capex approval did not exist. One cannot make out from DEx-5 that capex approval did not exist.

100. In any event, I accept the plaintiff's evidence that this payment was not authorized by him. The invoice shows that the payment was authorized by one K. Nair. If there is no capex approval, it is not something that the plaintiff should be responsible for as it is not his duty to obtain capex approval even in this instance. The request for the order was approved by MHCC as apparent from page 244 of DEx-5.

101. The cost control center did get involved in this transaction as expected. The work and price was checked, verified and approved for payment by one Sherine Chand who was also produced as the defendant's witness. The place where the plaintiff got involved in the transaction is when he negotiated the charges with Lincoln Refrigeration and brought it down by $2000. The initial charge by Lincoln as per its service report number 25984 was $5500 and the notations show that Sanjay negotiated the price with one Praveen Singh, the Managing Director of Lincoln, and brought the charges down.

102. After the charges were revised, the costs control center verified and approved the invoice. The direction to proceed with the payments was by Nilesh Kumar and I understand that he is the same person who testified on behalf of the defendant.

103. It was within the plaintiff's powers to re-negotiate prices and save costs for CFL. CFL should appreciate that the plaintiff did what he was required to as per his JD. If

anything, the plaintiff did best what his work required of him: to cut costs for the department and he managed to save in that transaction $2000 for the defendant. How that amounts to misconduct is something that the defendant is unable to satisfy me and convince me that it called for the plaintiff's termination.

104. If there is no capex approval as alleged by the defendant for this transaction, it shows that there were other works for which capex approval did not exist and these are transactions in which the plaintiff did not play a part in authorizing the works or the payments. It could also be that this job was urgent that required work to be done and approval sought later. I say this because freezer works are urgent works as it contains items that can go bad or suffer shrinkages and result in loss to the company. The people in charge in their discretion may find it fit to have this attended to urgently. Mr. Pawan Sharma's evidence that other methods like back up containers on hires should have been used is a comment is hindsight. He is a person from the human resources department and at the time the problem occurred, the people in charge including the plaintiff did what they thought was the best solution at the time. Some people may not agree to this approach but that does not mean that the approach taken by the plaintiff and others is wrong. It is a matter of exercise of wisdom and quick action to avoid losses to the employer and I do not find that the decision to require urgent repairs to freezers is abuse of power or office or something done for the purposes of personal gain or deliberate attempt to breach the company's policies.

105. The other allegation in respect of EX-5 is in respect of invoice number 7500 dated 10 May 2011 and issued by Lincoln for $18,500. Lincoln had basically supplied and installed one refrigerator for MH Tavua Branch. The invoice shows that one K. Nair authorized the payment. The attached documents appearing on pages 250 and 251 reveals that this was a matter that was handled by the General Manager Mr. Uday Narayan. Sanjay was only involved in the transaction when he negotiated the price from $19,000 to $18,500. The person who checked and verified the order from the cost control center was not the plaintiff.

106. Asitha being the defendant's witness testified accordingly in that the plaintiff was not involved in the transaction as per the documents except for negotiating the price. He also stated that he cannot comment whether there was capex approval for this transaction. If that is the position, I find that the defendant is not able to satisfy whether the procedural flaw in fact existed for an accusation against the plaintiff to be maintained. Secondly, even if capex approval was not obtained, it was not the responsibility of the plaintiff to do so for reasons I have already mentioned.

107. The plaintiff was also referred to DEx-6 which appears on pages 275 to 279 of Vol. 2 of the DBD. He was questioned on whether he had authorized payment in the invoice number 00021470 dated 12 September 2011 by Lincoln Refrigeration. He answered and said that he did not and the document does not bear his signature, one Aneesh had authorized the payment. He was in Melbourne at the time for his long service leave paid for by CFL.

108. There is nothing to discredit the evidence of the plaintiff as he did not sign any document authorizing the payments. Even the order form appearing on page 277 of Vol. 2 of the DBD does not bear his signature for approval of payments. His department and namely one Sherine had checked and verified the transaction but that cannot be a blame that CFL can conveniently lay on the plaintiff. If any capex approval was needed, the divisional financial controller was to seek that. The role of Sanjay's department was to check and verify the costs and try and renegotiate the price. Instead of questioning one Ameesh for this transaction, CFL chooses to blame the plaintiff for someone else's work. This shows malice on the part of CFL and an exercise of witch hunt to find some documents to lay the blame on the plaintiff.

109. In respect of DEx-6 and in particular invoice number 0002147, Asitha had confirmed that the order in respect of this invoice was signed by Ameer Hussein and him. Why then the allegations against the plaintiff? It also concerns me that there was no capex approval shown to the court for this transaction. If it existed why was the plaintiff accused of not having obtained it? Further, why was it not brought to the court? If it did

not exist, then was this an error committed by even the financial controller and something which indicates to CFL that the policy should be well publicized and the key personnel be informed about it. It is then vindictiveness on the part of the defendant to single out the plaintiff? I answer that in the affirmative.

110. The other allegation arises from DEx-7 which appears on pages 152 to 178 of Vol. 1 of the DBD. This exhibit contains several documents and I will focus on the ones in which the plaintiff has been asked to clarify his position.

111. The plaintiff was questioned on the emails appearing on pages 175 to 177 of Vol 1. of the DBD. He was questioned that he had approved the works when he had no authority to do so beyond $500. He was also alleged to have approved the works without the LPO. It was stated at the time this allegation was made that the GM was responsible for approving this work. The particular work that the plaintiff had approved was for invoice number 00000746 dated 7 March 2012 for an amount of $2900. The invoice is still part of DEx-7, and appears on page 166 of Vol. 1 of the DBD. The plaintiff was alleged to have authorized works by Granville without an LPO and that he was not authorized to do so as it was the responsibility of the General Manager.

112. The plaintiff testified that this was an operational matter and he would only intervene if he was asked to and that he is sure that Mr. Uday Narayan who is the GM of MH Supermarket would have called him. The works were very urgent as this concerned the freezer room which contains stock in high dollar value. He further testified that if the compressor was not fixed, the meat would go bad and that with such issues one cannot wait for approvals and issuance of LPO's.

113. I do not find from the evidence that what the plaintiff did was wrong in principle or by any standard. He would have been advised that there were issues regarding the freezer for him to get involved because indeed these are operational matters which involves costs to the company. The plaintiff's duty was to save costs for the department and he realized that if the freezers were not fixed on time, the meat products would go bad and result in terrible loss to the defendant. The plaintiff's attempt was not to gain any

personal benefit but to work for the defendant sincerely to act on the problem at that moment and do the best in the circumstances.

114. In any huge company like the defendant's, it cannot be overlooked that there are matters which often will fall with the category of emergency and someone has to attend to these matters for a quick fix to avoid further disaster or losses. One cannot always start looking at the papers and documents to check for authority and permissions when emergencies take place. There is no evidence to contradict that the defendant company did have freezer issues and that it needed to be attended to. If the plaintiff acted in time and made a decision, it cannot be classified as misconduct even if it is not the best decision. He may have decided not to wait for the LPO which decision in hindsight maybe thought as improper but what happened in that circumstance of the case was done to save the costs for the company and I do not find anything untoward about it.

115. Mr. Asitha's evidence was that Sanjay did not have powers to approve works. Store Manager has to do it. I find that Sanjay's position was above the General Manager's position and him performing a function concerning the operations of CFL was not ultra vires. He could perform the functions of his subordinates.

116. I also find that since this is an operational matter and Granville Acer was the nominated new agents of McAlpine Hussman which provided refrigerators to MH Fiji wide, there was no need for quotations to be taken from other companies. This was an existing service provider which replaced Lincoln Refrigeration. Further, the plaintiff's financial authority on an operating cost has not been limited by any document. It therefore cannot be said that he could only approve works of $500. The Authority Levels Guideline does not limit his powers financially in respect of operational costs. He was told to reduce the costs by $2m dollars per month and if in his wisdom this action was going to cut costs and losses to the company, then so be it. Any contrary opinion is a matter for financial debate which should take place internally and new guidelines decided but cannot be used as a ground for termination.

117. The cost control center even knew that Sanjay could proceed to order jobs in certain cases without an LPO. The email from the centre from Sherine Chand appearing on page 176 of the Vol. 1 of the DBD reads:

***"Managers, please follow procedures to avoid delays. LPO's should be given first before proceeding with any job unless and until arranged by Sanjay. Please make arrangements to send request for approval by mail run no later than 23/03/12".***

118. The above also indicates that other Managers were getting work done without LPO and the cost control center had to make this observation. The plaintiff, in his case explained the reasons for attending to certain urgent works without the LPO and I accept that his reasons are justified.

119. Exhibit 7 on page 152 in Vol. 1 of the DBD also has a general sales register sheet produced by Granville A.C.E.R which shows work done by it for the period 1 January 2011 to 30 March 2012. Sanjay was alleged that he was giving approvals for the various invoices without proper approvals. The plaintiff testified that he only gave approvals for urgent works which related to urgent maintenance and repairs. The monthly servicing is an ongoing matter and it takes place when servicing is due.

120. I do not find that Granville Acer needed approval to carry out any maintenance and servicing work as it was, I repeat, a nominated agent to provide service. It was nominated by McApline in consultation with the MH personnel which included the General Manager and the plaintiff. This replacement service provider was needed because I find from the evidence of the plaintiff, which I accept, that Lincoln Refrigeration could not maintain the standard of service required by MH and the freezers were suffering problems most of time. One Keresi from Lincoln who used to provide the service had started work in Granville and MH needed Keresi back to fix the problem in the freezers and so Ian Ramsay from McAlpines had to replace its local service agent.

121. The invoices attached in the exhibit indeed indicate that the work that the plaintiff had authorized involved freezer works which by its general nature requires urgent attention. I find that these are operational matters for which work could be authorized by the plaintiff and approvals sought later.

### *3. Vinz Workz Limited and MN Builders*

122. The specific allegation against the plaintiff starts off with DEx-9 which appears on pages 296 to 308 of Vol. 2 of the DBD. The first part of DEx-9 consists of a report by CFL's Internal Audit Department. In that report, the plaintiff was directed to clause 2 and in particular page 300 of Vol. 2 of the DBD. In that report the internal auditors make a finding to the effect that ***"audit further notes that $57 K worth of payment has been made to MN Builders and in most cases either only one quote from M N Builders was obtained or no quotes were obtained".***

123. The plaintiff stated that if the works were urgent then it would proceed without waiting for LPO and capex approval. The plaintiff agreed that 3 quotations would be needed for works to be done if the work was not urgent. He also indicated that Vinz Workz was engaged in urgent works because it had done work for CFL before and Sir Morgan had appreciated the workmanship.

124. I accept the plaintiff's evidence on what should be the proper procedure when it came to urgent work. The property maintenance and development circular dated 17 September 2010 also makes provisions for this. The document appears on page 1112 of Vol. 4 of the DBD. In clause 6 it is stated that:

***" In case of urgent jobs such as roof leaks likely to cause damage, repair of buildings due to robbery, breakdown in plumbing, urgent electrical works etc, then the Property Manager in consultation with the Director Properties shall commission the work to be carried out as soon as possible by a Contractor regularly undertaking works for the Company.***

***In all such urgent cases the Property Manager must follow through and ensure all applicable procedures as set out above are followed through and complied with on post event basis."***

125. I find that the defendant is attempting to lay all the blame for $57,000 paid out to MN Builders when the report clearly states particularly at page 300, Vol. 2 of the DBD that ***"the orders were signed by various divisional signatories [Kirshan Nair, Thushara, S Kuna, Uday Narayan, Sanjay Lal, Shalendra Kumar and Ameer Hussain]".***

126. No one else from the divisional signatories was taken to have breached the policies and dismissed for their actions. It is unfair on the part of CFL to take action against one person only when mostly all the divisional signatories were conducting transactions in the same manner. If the other employees were continually employed then I am not satisfied that not following the procedure as per the directions of CFL was such a grave misconduct for which a person should be dismissed from employment. If it was, then everyone else who operated in a similar fashion should suffer the same fate as the plaintiff.

127. The report also indicates that in few instances only capex approval was obtained and not in the rest of the cases. It also notes that Kriz Signs was awarded jobs worth of $39,720 without any other quotations being obtained. The plaintiff is not alleged as having arranged Kriz Signs to carry out the works. This indicates that there was a common problem that existed in the defendant company and not one with which only the plaintiff could be identified and blamed for.

128. There was clearly some problem that existed in CFL which is either the divisional signatories did not understand the procedure correct or it was not so strictly abided by even though it existed. It could also be, as the plaintiff says that the works were urgent and it needed to be proceeded with and the procedure of 3 quotations and capex approval sought later.

129. The report did not recommend that anyone be terminated for the discrepancies but in its conclusion and remarks it gives recommendations about the required corrective actions. Three corrective actions are suggested by the report. The first is that the *"company policies and guideline to be adhered to. Financial controller must ensure that policies and procedures are communicated to the relevant employees".* The first corrective action suggested indicates that the auditors intended that everyone be advised of the policies clearly and asked to follow it. I find that the plaintiff was singled out and severely dealt with when others committing the same error were conveniently let free. I have to look at the circumstances of the termination in totality and I do not find that I am wrong in dealing with how the defendant dealt with other employees as well. There is implied term of an employment relationship that each party will perform their contractual duty in good faith. It is unfortunate that CFL, on the evidence did not show that it exercised good faith when it came to this employee.

130. The second and third corrective actions suggested by the auditors were that "***relevant number of quotations must be obtained to ensure that better quality of item is purchased at the best competitive prices. LPO's must be issued first before the purchases are made or services are performed".*** These corrective actions suggested needed to be implemented by CFL but no evidence was put forward that CFL followed the auditor's report for development purposes. It was used maliciously against one employee instead of correcting the errors in the system.

131. Having made the above observations, I find that it is not for the plaintiff to answer for the entire $57,000 worth of works done by MN Builders without proper procedures being followed. The plaintiff is only answerable to the specific allegations against him which was put to him after general allegations were made which I had to deal with in the foregoing paragraphs.

132. There were so many documents filed out of which some were tendered as well but the plaintiff was not specifically questioned on the same although later the defendant's witnesses made comments and remarks on the same. If the plaintiff was not provided an

opportunity to comment on the documents, those allegations will properly not be addressed and dealt with.

133. In respect of the specific allegations, the plaintiff was specifically directed to page 304 of Vol. 2 of the DBD. This is a request for an order form which shows that the request was approved by the General Manager Uday Narayan. The cost control center had checked and verified the transaction. It was done by one Sherine Chand from the plaintiff's department.

134. The plaintiff stated in his evidence that the order form was signed by K. Nair and Tushara. He repeated that it was not his responsibility or that of his department to obtain capex approval. Hid department only checked and verified the order.

135. The witness Asitha said that he can only verify one signature in the cheque requisition document pertaining to the same transaction. He said that the signature was that of the previous financial controller's. He could not verify the other signatures. His evidence does not say that the plaintiff was involved in this transaction. He also said that he cannot say whether capex approval was obtained or not.

136. I cannot fathom why the plaintiff is being alleged as not having obtained a capex approval when he did not authorize the payments. His department had checked and verified the transaction and if any capex approval was to be sought for the works, it was not for the plaintiff but each divisional financial controller.

137. I also find that the defendant has not been able to establish by any documentary evidence that there was no capex approval for this transaction. How can one make that assertion looking at the cheque requisition and the request for an order form? Even the financial controller could not make that comment.

138. Page 307 of Vol. 2 of DBD was also made reference to. This contains an email from one Sherine from the plaintiffs department who seems to have indicated that works have been approved for $5850 by MN Builders. The plaintiff's evidence is that he has not taken part in this transaction and there is no evidence to suggest that he has approved

works for $5850.The internal memorandum appearing at page 308 to the financial controller indicates that someone approved the works and this approval according to the evidence of the plaintiff is by the General Manager MH Mr. Narayan. There is no evidence to refute the plaintiff's contention. If capex approval was needed and not sought, I do not find that the plaintiff is answerable. If there is no capex approval, why were not people in charge of authorizing work under the same scrutiny as the plaintiff? Once again, is this a case of selected justice? I do not find that the defendant has justified this as not one of the cases which fell under the category of malice on its part to take action against one person.

139. The plaintiff has correctly identified in my finding that he does not take responsibility for other employee's actions even if it is from his department where he does not sanction a transaction. Sherine Chand had checked and verified the transaction, she should be answerable for the same, if there are any issues, but once again she was given pardon.

140. The final allegation in respect of M N Builders was DEx-16 which appears on pages 415 to 420 of the DBD. The documents are pertaining to works carried out by Vinz Workz on invoice number 288356. There is no documentary evidence or notation by the plaintiff to indicate that he authorized the works or the payments. The plaintiff gave evidence that the notations on the invoice indicate that the amount was revised and approved by one Uday Narayan. There is no evidence to contradict this. Further the order form pertaining to that works was checked and verified by one Sherine from the plaintiff's department. There is also a notation that works had already been done on instructions of Uday Narayan and that in future prior approvals were needed. The order form shows that the work was urgent. This substantiates the plaintiff's evidence that there were works which were so urgent that it needed to be carried out urgently and that it could not wait for the approvals to avoid further losses. It also substantiates the plaintiff's evidence that this was the most appropriate practice in cases of emergency and used by other reliable heads of department.

### *4. Ashok Transport Limited.*

141. In respect of Ashok Transport Limited, the allegation was that the plaintiff had entered into a contract without having the proper authority to do so. The plaintiff was specifically referred to DEx-4 appearing in Vol. 1 Tab 20 of the DBD. This is an agreement between the contractor Ashok Transport Limited and CFL. It is not disputed that this is a standard trucking agreement which was signed by the plaintiff and witnessed by the General Manager Mr. Uday Narayan.

142. The specific allegation in the trial was that the plaintiff did not have authority to sign the document although the allegation in the termination letter is that the plaintiff had actively participated, negotiated and concluded the agreement. Asitha's evidence was that Ashok Transport had been with the company for a very long time. It used to carry out works without the agreement. CFL had 4 to 5 trucking companies and the negotiations were handled by Sanjay. He had the authority to negotiate the cost. He could negotiate the contracts. However according to Asitha he could not sign the contract.

143. The defendant refers to DEx-3 which appears on page 85 of Vol. 1 of the DBD. Based on this the defendant's assertion is that this document which sets out the policy for entering into written agreements was breached.

144. The plaintiff's position is that Ashok Transport Limited had been providing services as an independent contractor since a long time. The trucks belonging to this company would transport goods to various CFL branches Fiji wide from CFL's warehouse. The plaintiff noticed that the defendant was suffering all the costs for shrinkages and loss in transit when the contractor should be paying the loss. Upon noticing this, he discussed the matter with Mr. Uday Narayan the GM of MH Supermarket who told him to contact one Deepika Prasad from Legal Department for a standard trucking agreement.

145. He contacted the Legal Department for an agreement and he was given a standard agreement which was then amended to reflect some changes like the names of the parties and the plaintiff then had it checked by Uday Narayan and forwarded it to Ashok

Transport Limited for execution. The plaintiff says that this was done to protect the position of CFL and to reduce the operational costs which he was appointed to look at.

146. I do not accept the evidence of the defendant's witnesses that even with the oral contract with Ashok Transport, the liability of losses in transit was on the contractor. In reality, it is Sanjay who oversaw the overhead expenses and realized that CFL was paying for the losses. It is Sanjay who looked after all operational matters.

147. The plaintiff says that the GM Mr. Uday Narayan also witnessed the agreement and did not make any mention about following any procedures. If Uday Narayan had any concerns he should have refused from signing the agreement, he asserts. The plaintiff says that he was never given or shown this policy on entering into written contracts and the defendant's position is that the plaintiff would have received it or ought to know about the same. I once again reject the defendant's evidence which is only speculation. I find that the plaintiff was not given a copy of the same or made aware about it as the human resources department is not able to produce any records of the same.

148. It is not disputed by the defendant that this is a standard agreement and that there is nothing wrong with the agreement. It was however stated by Pawan Sharma that the problem will be with the exit clause if CFL wants to terminate the agreement. I find this argument legally unsound. Any party can contract out of the agreement of this nature by giving express notice to that effect.

149. Since this is a standard agreement, I need to first ascertain whether the policy on written agreement applies to this case. Clause 2 f of the policy clearly states that the policy does not apply to ***"any other contract or agreement deemed to be of a standard or routine nature by the Group Financial Controller or Corporate Secretary".*** There is no evidence from the Group Financial Controller or the Corporate Secretary that the agreement that the plaintiff signed was not a standard or routine agreement. This was the agreement that the legal department had given to the plaintiff on his request on directions of the GM Mr. Uday Narayan. If this is a standard agreement then the policy does not apply to the agreement under scrutiny.

150. Clause 8 of that DEx-3 discusses who shall execute the agreements. It reads:

***"All agreements to be executed at the business unit level as nominated by the Corporate Secretary, must be signed by the respective General Manager and Financial Controller. Such agreement will generally concern matters relating to the day to day operations of the business unit".***

151. This policy came into effect before the position of the plaintiff as Group Operations Manager was created. Whether the plaintiff has the authority to execute the document is clearly not prohibited. The policy cannot fairly state that as it was not envisaged in 2007 that a GOM position would exist.

152. The policy says that the GM of the respective division and the Financial Controller can sign the agreement. In my finding, the plaintiff's position is definitely superior than that of a GM. He could sign the agreement like the General Manager of the division could.

153. With P Ex.25 which is a letter dated 7 September 2010, it is clear that the plaintiff was responsible for cost reduction and had the ability to direct the financial controllers. If he could do that, it is not then wrong to say that his position could not be one less than a financial controller of a division and that he could sign in place of the financial controller as well.

154. The same letter says that the plaintiff is in charge of controlling MH finance directly. If that is the position then the plaintiff's authority to sign the agreement cannot be questioned as he is equivalent to a financial controller of MH. None of the subsequent letters issued by the defendant to the plaintiff on 1 February 2011 or 16 June 2011 being PEx-26 and PEx-27 changed the plaintiff's authority to be directly in charge of MH Finance.

155. Further, Mr. Uday Narayan who has the authority to sign under the policy should have not allowed the plaintiff to sign the agreement. Mr. Narayan did not take any objections and this shows that there was in fact no clarity about whether the GOM could sign and no one doubted his authority, not even him. If he had any idea that he was not to sign

the agreement, he would not have. His duty was to save costs for the department and in performance of that duty he signed the agreement to make the contractor contractually liable for goods damaged in transit.

156. The defendant also asserts that clause 4 of the policy was breached. Clause 4 reads:

***" An agreement to be entered into with an external party must first be thoroughly reviewed by the General Manager or the Financial Controller and the draft of such an agreement forwarded to the Corporate Secretary in Head together with written comments on following:***

***(a) suggested amendments.***

***(b) disagreement to any operational or other matters specified in the agreement( in absence of such comments it would be presumed that the comments are acceptable).***

157. If the policy applies to this agreement then it is my finding that the onus was on the GM Mr. Narayan to have undertaken the task in clause 4. He was fully aware of the agreement and he witnessed the same. He could have also sought directions on whether the plaintiff as GMO could sign the documents. I find that no such action was taken by the GM as this agreement was of a routine nature and that the policy did not apply. If clause 4 had to be followed then the GM was equally responsible for non-compliance. What needed to be done was that the agreement needed to be signed properly.

158. I also find then when the plaintiff signed the agreement, he did so with a good motive to protect CFL. His actions were not designed out of ulterior motive and one that incurred loss to CFL. CFL should have taken this into account but because there existed bad faith in the upper management, any action of the plaintiff that could be used to see him out of employment was grabbed as an opportunity.

159. I now turn to the question of procedural correctness in carrying out the termination.

### *D. Was the termination lawful for want of proper procedure?*

160. In a summary dismissal situation, the employer is only required to act in accordance with the provisions of the ERA. The procedure required on termination is that a worker must be provided with reasons, in writing, for the summary dismissal at the time he or she is dismissed: ***s. 33(2) of the ERA.*** The worker must also be paid on dismissal the wages due up to the time of the worker's dismissal: ***s. 34 and 114 of the ERA.*** It is also mandatory that the worker be provided with a certificate of service when he is dismissed. The certificate of service must state the nature of the employment and the period of service: ***s. 30(6) of the ERA.***

161. DEx-19 and 20 both indicate that the plaintiff was given a letter of termination and his full pay that was outstanding. There is no evidence tendered by the parties that the defendant had also provided the plaintiff with a certificate of termination. This is mandatory under the law as it will assist an employee to secure a job with another employer. The certificate of service is a document evidencing material details about an employee's service to the employer. This is necessary if the employee wants to pledge his or her experience to gain new employment in future.

162. In not providing the plaintiff with a certificate of service, the employer breached the mandatory provisions of the law and as such the dismissal was not procedurally correct.

163. I do not find that the plaintiff has satisfied me that the defendant had not investigated the issue pursuant to which the termination was brought. He was being interviewed twice and various allegations were put to him orally. There is no requirement to give written allegations to the employee if he is contemplated to be summarily dismissed. Normally in such cases, the employers do not provide any hearing to the employees. They make the decision to terminate on the information it gathers pursuant to its internal findings. There is no right of hearing and response and legal representation. If these were the requirement, I have said before, and I say again that, the purpose of summary dismissal will be lost.

164. An employer may not want to keep an employee in the system and continue with the investigations. It may be detrimental to the employer for many reasons. For that reason it may be preferred that the dismissal takes place immediately. The only enquiries that may be necessary are for the employer to come to a conclusion on whether or not summary dismissal should be carried out. If it carries out the dismissal based on its enquiries and the employee feels that the reasons are not established, he or she can have that decision questioned through litigation where the employer will have to establish the reasons for the termination.

165. The employer is not bound by any procedure to provide to the employee an opportunity to address the enquiries though this may assist the employer in making an informed decision and justifying its findings when the decision is under scrutiny in proceedings before an independent tribunal or court.

### *E. Was the termination fair?*

166. The plaintiff claims that the termination was unfair in various ways. His first contention is that when he was promoted to the position of the GOM, he became subject to victimization and bad faith. The defendant's executive management team became extremely strained and he became a victim of termination. He says that the evidence would show that he was singled out, accused and punished for alleged acts of misconduct which were committed by other senior managers in CFL.

167. I have already made a finding of fact that the plaintiff was not treated in good faith and that he was subjected to unfair employment practices when he was being treated in a manner which was different from how other people conducting business in the same level or subordinate level were treated.

168. I find that the plaintiff has established bad faith on the part of the defendant which makes the termination unfair. If there was good faith based on which termination was carried, although the reasons may not be right, I would not hold it in favour of the plaintiff that he was victimized. There are instances where employers can have wrong

reasons for termination but there is no element of bad faith; it is a genuine error in analyzing the facts and making a finding. In this case I find that despite CFL not providing or finding any evidence of losses sustained by the company but instead it being shown by documents and on papers that what the plaintiff did was for the interest of the company, he was terminated. This was only because it was desired that he be removed from the company as some senior executives, like the plaintiff says, one of the local directors Daniel Whippy did not like the fact that was prominently recognized by Sir Morgan from Kuala Lumpur.

169. I accept the plaintiff's evidence that when it was decided by Sir Morgan that the plaintiff should have a motor vehicle for his own use, this decision was not implemented as the directors did not like the idea. When Sir Morgan came to realize that his directions had not been followed, he questioned the upper management and even expressed concern that his directions were overruled. He then directed that the plaintiff be given a car and that led to bitterness in the senior management. Since then the dislike towards the plaintiff began. The opportunity came when the plaintiff's wife was terminated. The plaintiff came within the circle of suspect as well and this was seen as an opportunity to strike him.

170. The element of bad faith was also apparent when the plaintiff was being interviewed by the defendant's executives. He was humiliated when he was interviewed. I accept the plaintiff's evidence that Mr. Daniel Whippy called Sanjay's wife a thief, made side comments and questions about how she will be serving in prison if she is found guilty and also made comments about her having an extra-marital affair with someone else. If the interview was for the purpose of ascertaining the facts of the plaintiff's conduct and compliance with the company's policies, there is no reason why these comments were necessary except to humiliate the plaintiff.

171. I find that in carrying out the dismissal, the plaintiff was unnecessarily humiliated, his feelings injured, causing him distress. This should be avoided by any employer because they do not have any license or mandate to humiliate anyone. They are paying their

workers in return for the service provided. They do not provide wages without any work.

172. Daniel Whippy did not take stand to deny any allegations made against him. He was also alleged to have put the plaintiff on stop departure which I find surprising because the plaintiff was not charged by any recognized authority. The evidence was not challenged despite being pleaded in the writ. Daniel Whippy does not have powers to put anyone under stop departure. He used his powers unnecessarily and in bad faith to stop the plaintiff from leaving the country. The plaintiff found this out at the airport when he was leaving for Melbourne with his children. He requested and begged Daniel Whippy to ask the Immigration to let him go but Daniel Whippy was adamant not to let the immigration allow him to leave Fiji. The plaintiff had also talked to one Susan from Kuala Lumpur who is also one of the executives of CFL. She also did not assist the plaintiff in getting the stop departure cancelled which was placed at CFL's instance. There may have been a complain of theft against the plaintiff as the defendant contends but since he was never charged, there was no court order for him not to leave the country.

173. I am very surprised that a person who has no authority to stop anyone from leaving the country managed to secure a stop departure order and the plaintiff had to suffer legal costs and humiliation to get that stop departure cancelled. The immigration had to cancel the same as there was no court order or directions from any lawful authority to stop the plaintiff and his children from leaving the country.

174. This all amounts to bad faith on the part of the defendant as Daniel Whippy is one the main executives of CFL. To add to that bad faith, when CFL had Pawan Sharma to deliver the letter of termination, the plaintiff was asked to resign. I accept the plaintiff's evidence over that of Mr. Pawan Sharma that he does not remember asking the plaintiff to resign. This was not done with any good motive but to avoid CFL from being blamed for the termination and to have a clean slate.

175. I do not find that advertising in Fiji dailies being Fiji Sun and Fiji Times at least 3 times in each daily amounts to treating the plaintiff unfairly. The defendant is entitled to protect its position from being held liable for any trade that takes place at the plaintiff's instance. As a result of that, it had to inform its customers and service providers that the plaintiff was no longer employed by CFL.

176. The plaintiff also complains of being humiliated when his wife's termination notice was advertised or posted next to his at the times described above. There is no evidence from the plaintiff that CFL required the newspapers to publish the notices in that way next to each other. Normally, a person who advertises notices does not pick and choose the portion and place where the notices are to be placed in the papers. In the absence of any evidence, I do not find that there were any directions by CFL that the notices be published in that way.

177. In my findings, there was bad faith on the part of the employer that caused the plaintiff to suffer loss of employment. Had it not been for the bad faith that existed, the termination would not have occurred. The bad faith makes the termination unfair.

***Remedies***

178. S. 230 of the ERA permits the court to grant an employee reimbursement to the employee a sum equal to the whole or any part of the wages or other money lost by the employee. In this case it is clear that the plaintiff was terminated on 7 May 2012. The plaintiff says that he applied for jobs at various places but was unsuccessful. He did not provide evidence of his applications. He answered in cross- examination that he only had one rejection in writing. He testified that he opened up his business in August 2013 after borrowing about $21,000 from his relatives. The business is Tulip's Beauty in Suva City. He further testified that he draws a sum of $25,000 per annum from the business.

179. The plaintiff was out of work for about 14 months. It is the principle of law that every person must mitigate his loss and even in this case it was the duty of the plaintiff to have mitigated his loss which I find he did by opening up his business. He was bereft

with a certificate of service which could have assisted him to find a job. That is a blame that should be laid at the employer's door.

180. The plaintiff cannot expect that this employer should pay him for loss of future income. Damages are assessed in this way if a person dies or suffers personal injury incapacitating him from further employment. In this case the plaintiff had to find another work to make ends meet and I find that with his experience and ability as a GOM, he should have been able to find work within 9 to 12 months.

181. I find that awarding him wages for 12 months is not unjustified because he also had for his personal use the company vehicle. As per the letter provided to him on 21 June 2011 which appears on Tab 10 of the DBD, the plaintiff could use the vehicle for private use too as long as it was limited to reasonable mileage ***(see clause 1 of the letter)***. I am not proposing to make a separate aware for loss of use of vehicle for a year. Instead I will award loss of wages for one year and loss of use of the vehicle is one component that is included in the same.

182. I find that the judgment of the Full Court in the case of ***Food for Less (Fiji) Limited v. Elizabeth Chand [unreported] Civil Appeal No. ABU 0043 of 2016*** at paragraph 28 to be relevant and self-explanatory:

"***If the finding of unlawful termination is rightly decided, I am of the view that the court has power to make an award which the court thinks is just. In this case the Tribunal has awarded one years' wages for unlawful termination. <u>The ERC however reduced the amount to eight months' wages on the ground that the period is sufficient for the respondent to find similar employment. I am of the view that the award made by the ERC is modest and not excessive</u>.... The other complaint is of awarding three months' wages for the humiliation caused. We have seen the facts of this case. The police had investigated and found nothing against the respondent. However, we have seen how the respondent was convicted by the management. She was branded a thief. The management was looking for a conviction. I have already considered the aspect of the threats by the management. Considering all the***

***evidence I am of the view that the learned High Court Judge was right in concluding that the threat had caused humiliation. I am also of the view that her award of three months' wages on account of that is very modest and should be upheld".***

***Underlining is Mine***

183. The plaintiff was earning $55,000 per annum which was inclusive of COLA. PEx-27 makes it very clear that COLA was included in the new salary of the plaintiff. This makes me arrive at a finding that the plaintiff is not entitled to be paid a 3 percent increase in COLA. The relevant part of the letter reads:

***"We are pleased to confirm that your salary has been increased to $55,000 per annum effective from 1st April 2011.***

***This increase is inclusive of any general increase or COLA that may be granted to employees this year…"***

***Underlining is Mine***

184. The plaintiff said that he was also entitled to $500 per month allowance as he was meeting a lot of suppliers. Although there is no denial by the defendant of this, I find that the monies were not for the plaintiff's personal use. It was given to him for expenditure on entertaining the suppliers and that he is not entitled to be paid that as a benefit to him.

185. I agree that the plaintiff must not be deprived of the FNPF that the employer would have contributed from the employer's side at the current level of 10 percent of the net wages. I do not find that former 8 percent is applicable because the plaintiff had not been paid the money when it was due. The calculation would amount to $5,500. In FNPF the interest rate is normally between 5 to 6 percent and I find that this award should attract interest as well.

186. I also find that the plaintiff is entitled to damages for not being treated fairly and in bad faith for which he suffered embarrassment, humiliation, and injury to his feelings. I feel

that he ought to have been treated fairly and equally and not victimized. For unfair dismissal, I find that an award of $11,500 is justified.

187. I also find that the plaintiff should be paid interest at a sum of 6 percent for loss of wages for 12 months. Interest is a discretionary matter and there is no reason why interest should not be paid. The plaintiff has been kept out of this money which he could have invested and used properly. He has lost use of that money and so he is entitled to be paid interest on the same. I will clearly produce what the plaintiff is entitled to in a table form in the final orders.

***Costs***

188. This is not a matter that should have been tried in Court. I find that CFL had acted in bad faith and the executives knew that the plaintiff was being selectively victimized. This matter should have been settled irrespective of the fact that the plaintiff was terminated. The trial took 5 days and involved a lot of documentation provided by CFL which had to be examined in detail by the plaintiff. There were also disbursement costs and costs for preparing and conducting the trial for 5 days. I find that a sum of $6,500 is justified in my summary assessment of the costs.

***Final Orders***

189. In final analysis, I find that the plaintiff's termination was unjustified and unfair. I award him the following remedies:

1. ***1 years' wages lost as a result of the termination inclusive of loss of private use of vehicle: $55,000***
2. ***Interest on the sum of $55,000 from 19 December 2013 (date of writ) to 12 September 2017 (date of completion of hearing) at the rate of 6 percent: 3 years ($9,900) 8 months (2,200) and 24 days (216. 96): $12, 316. 96.***
3. ***FNPF: $5,500***

4. ***Interest on FNPF for 3 years, 8 months and 24 days: $571.60.***

5. ***Damages for humiliation and injury to feelings: $11,500.***

190. In terms of the paragraph above, the total sum to be paid to the plaintiff is **$84,888.56.**

191. In addition to the above sum, the plaintiff shall be paid costs in the sum of $6,500.

192. The total sum to be paid to the plaintiff inclusive of costs is **$91, 388. 56.**

Anjala Wati

Judge

10.08.2018

HIGH COURT OF FIJI SUVA

*To:*

1. *Jackson Bale Lawyers for the plaintiff.*
2. *Patel Sharma Lawyers for the defendant.*
3. *File: ERCC 5 of 2013.*