

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

ORIGINAL JURISDICTION

CASE NUMBER: ERCC 08 of 2016

BETWEEN: **MOHINI LATA**

PLAINTIFF

AND: **PA LAL COACHWORK**

DEFENDANT

Appearances: Mr. J. Serulagilagi for the Plaintiff.

Ms. R. Lal and Ms. K. R. Lal for the Defendant.

Date/Place of Judgment: Friday 27 September 2020 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

JUDGMENT

A. Catchwords:

EMPLOYMENT LAW – Claim by employee that she was unlawfully and unfairly terminated – employer refutes unlawful and unfair termination and relies on its defence that the employee had resigned and she stayed back at work to work her notice period which was mutually extended – during her notice period she was guilty of misconduct for which she was terminated – whether there was resignation or termination of the employment – the employer cannot maintain both acts of resignation and termination at one instance – resignation ruled out on the facts of the case – employee found to be terminated unlawfully but fairly – the employer precluded from relying on allegations against the employee which were not outlined in the termination letter to justify the termination – whether proper procedures were followed by the employer – the evidence does not indicate that proper procedures were followed to terminate the employee – proper remedy to be granted considered – employee should be awarded costs in the matter too.

B. Legislation:

1. The Employment Relations Act 2007 (“ERA”): ss. 30, 33, 34, and 230.

Cause/Background

1. The claim between the parties arises out of an employment relationship that existed between the parties for 23 years prior to it being terminated by the employer on 9 September 2015.
2. The employee Mohini Lata claims that she was unlawfully and unfairly terminated from her employment. She seeks various remedies. For unlawful termination, her claim is for lost wages for 3 years calculating to \$54,912.00 as she was 52 at the point of termination. She also claims a sum \$7, 425.60 lost as contribution to the Fiji National Provident Fund, a sum of \$2,500 being long service benefit that she would have been entitled to if she had worked for two years and a sum of \$704 being her sick leave unpaid for 14 and 17 August 2015. She also seeks general damages for unfair termination.
3. In form of brief background, Mohini Lata was employed by PA Lal Coachwork since February 1993 as the Company Secretary. PA Lal Coachwork is a subsidiary company of PA Lal Holdings Limited which manufactures buses and coaches.
4. It is Mohini's position that when she worked for the company for 23 years, she only reported to the Managing Director Mr. Richard Lal and the Executive Director Mr. Victor Lal. Victor Lal was based in New Zealand. She says that she had an excellent working relationship with the employer until one Marissa Lal joined the company.
5. Marissa Lal is the daughter of the Managing Director Richard Lal. Mohini says then since Marissa joined the company in 2015, she took control of the company and made her life very difficult by creating a lot of work for her, causing her tension, shouting at her and taking away from her the role she has had for so long and assigning her new work which she was taking time to learn.
6. Mohini says that as a result of the tension and problem created by Marissa she wrote a letter on 26 May 2015 through which she informed the employer of her intention to resign from the employment with effect from 29 May 2015. She says that the letter which expressed that

intention was written on 26 May 2015 but was incorrectly dated 26 June 2015. It is her position that her resignation was not effective as it was rejected by the employer via an email dated 26 May 2015 by Victor Lal and that Richard Lal also asked her to stay back and work. She therefore continued to work for the employer but as administrative executive as per her new job description dated 22 May 2015. She executed the new job description on 29 May 2015. Her weekly wages was \$352. She says that she continued to perform her work as outlined in the job description until she was terminated.

7. The employer's position is that Mohini Lata was a very long time trusted employee and was like the mother of the defendant company. She was only reporting to the directors all these years. When Marissa Lal joined the company in January 2015 as Manager Group Operations, she started streamlining and putting procedures in place for effective management. She started looking after the day to day operations of the Company. Marissa Lal required more transparency and accountability. Mohini Lata then had to report to Marissa and seek permission for certain matters and acts for which she used to have a free reign before. This caused Mohini Lata grief and she got disturbed. As a result she would not listen to Marissa, show her disrespect and started creating problems and issues for the defendant company.
8. Being unhappy with more accountability and transparency, the employer says, Mohini resigned from the employment on 26 June 2015 with effect from 29 May 2015. After the resignation, the plaintiff worked her notice period with the defendant which was mutually extended for a proper handover.
9. The employer alleges that during the notice period, Mohini Lata was engaged in acts of sabotage, insubordination and abuse of company assets and theft. Notwithstanding those acts, the employer says that the plaintiff was given a right of hearing on various dates and times with management at which time the plaintiff confirmed her resignation with the employer. The employer also maintains that the employee was lawfully and fairly terminated for gross misconduct.

Issues/ Evidence and Analysis

10. The parties have filed minutes of the pre-trial conference and have agreed that the court determines the following issues which I have summarized below. It is to be noted that the plaintiff has not agreed for the court to determine whether the plaintiff had committed acts of sabotage, insubordination, abuse of office and theft. This is an issue which the defendant wants to try. All in all the issues before the court are:

1. *Whether the plaintiff had resigned from employment by a letter dated 26 May 2016 to take effect on 29 May 2016?*
2. *Whether after the resignation the plaintiff worked the notice period which was mutually extended for a proper handover?*
3. *Whether the employer agreed to pay the employee a sum of \$352 per week as an administrative executive during the handover period.*
4. *Whether the plaintiff was unlawfully and/or unfairly terminated from her employment?*
5. *Whether the plaintiff was engaged in acts of sabotage, insubordination, abuse of company assets and theft during this extended handover period and whether these acts amounted to gross misconduct warranting summary dismissal.*
6. *Whether the employer afforded the plaintiff a right of hearing on various dates and times with management and whether the plaintiff then confirmed her resignation with the defendant.*
7. *Whether the employer revisited the plaintiff's job description with the plaintiff at a meeting with management in order to outline the plaintiff's roles and responsibilities and illustrate the plaintiff's shortcomings.*
8. *If the plaintiff has been unlawfully and/or unfairly dismissed from her employment, what are the proper remedies that ought to be awarded to her? If the plaintiff is granted damages for unlawful and/or unfair damages, should there be*

any interest payable on the said amount. Should there be any order for costs of the proceedings and what shall be the proper amount to be paid?

11. All the issues above can be conveniently dealt with under three broad heads as follows:

1. *Resignation - (Dealing with issues 1 and 2 outlined in the preceding paragraph)*
2. *Termination - (Dealing with issues 4, 5, 6 and 7 outlined in the preceding paragraph).*
3. *Remedies - (Dealing with issues 3 and 8 outlined in the preceding paragraph).*

12. I will deal with the issues in the order I have identified in paragraph 11.

A. RESIGNATION FROM EMPLOYMENT

13. Mohini accepts that she wrote a letter of resignation on 26 May 2015 to take effect from 29 May 2015 but denies that the letter was effective in that her resignation was not accepted by the two Directors. She continued to work for the company and was given a new role as an administrative executive.

14. Notwithstanding when the letter of resignation was written, the important issue is whether Mohini had resigned from the defendant company with effect from 29 May 2016 and was only working her notice period which was mutually extended by the parties.

15. The resignation letter was tendered in as exhibit P Ex – 1. The first line reads as follows “*I would like to tender my resignation from 29.05.2015*”. Mohini asserts that by saying what she did in her first sentence, she only expressed an intention to resign and not that she has resigned. She said that she gave this letter to the Directors Richard Lal and Victor Lal. Richard Lal told her not to leave and Mr. Victor Lal emailed her not to go. She tendered Victor Lal’s email dated 26 May 2015 as exhibit P Ex-2 which reads:

“Good Afternoon Richard what’s happening she has been so loyal and dedicated to the company even Customs issues. She was under working from the beginning under the

directors and that how I think should be. It is hard to find good loyal people to work. Regards”.

16. Mohini says that when her resignation was not accepted it was ineffective and she therefore continued to work for the defendant. She was given a new job description as an administrative executive. The job description was dated 22 May 2015 which she signed on 29 May 2015.
17. Mohini testified that she understood from the new job description that her position changed to an administrative executive. This is the first time for her to sign a document like that. The document referred to was tendered in exhibit as P Ex-3. She says that she continued to work for the company until she was unlawfully and unfairly terminated.
18. Mr. Lawrence Raju who gave evidence for the employer said that the letter of resignation was written in June and received in June. The company had accepted the resignation. The Director Richard Lal had conveyed this message to Mohini and the Company Secretary Mr. Gardener Whiteside had also informed Mohini in a meeting that her resignation was accepted. The resignation was not conveyed to Mohini in writing. However he says that he does not know that she was asked to continue working after the resignation was accepted.
19. Lawrence Raju's evidence was contradicted by Marissa Lal who also gave evidence for the employer. Marissa stated in her evidence that Mohini had sent the same letter of resignation twice. Once on 26 May 2015 and the other on 26 June 2015. Her resignation was not accepted by the company. The company tried to work it out with her because she was a very long time employee.
20. I cannot fathom why the employer maintains the position that Mohini Lata had resigned when Marissa Lal indicated that her resignation was never accepted by the employer. It is my finding that if the resignation is to be effective, it should have been accepted in writing and communicated to the employee. The condition of the acceptance ought to have been noted in that letter and communicated to Mohini, the condition in this case being the requirement for Mohini to work her notice period.

21. I therefore accept Mohini's evidence as credible. Her resignation was never effective for want of acceptance by the employer. Victor Lal's email confirms that position. There is no evidence that Victor Lal never wrote that email although there were issues raised by the employer in cross-examination of Mohini Lata that it was not written on that date. However that evidence was not contradicted by any credible evidence.
22. Further, if the employee was working the notice period and during that period her conduct was viewed as gross misconduct then there was no need for the employer to send a termination letter to her. All that was needed was for the employer to ask the employee to stop working any further as she had already resigned.
23. The employer's witnesses gave evidence that on 18 August 2018, at a meeting, Mohini Lata was asked to take her leave. If Mohini's resignation was accepted by the company and she was only working the notice period, she will not be asked to take any leave but to cease working.
24. I now turn to P Ex – 4 which is a letter written by the employer on 17 August 2015. By this letter the employer is calling for a meeting with Mohini Lata. The first paragraph reads:
- “We refer to the above matter and your role as Administrative Executive at PA Lal Holdings Limited. We note that there have been difficulties as of late in relation to your transition to your new role as Administrative Executive which you accepted on 29 May 2015”.***
25. If the employer had accepted the resignation with effect from 29 May 2015 then the August 2015 letter will not talk about the transition to the new role. It will simply reflect that whilst the plaintiff had been working the notice period, difficulties have been noticed from her end or something to that effect.
26. I find that the employer is taking advantage of the resignation letter written by the employee when it very well knew that her resignation was not accepted and that she was given a new role of an administrative executive. It is the employers own letter being P Ex – 4 which

evidences that Mohini Lata had been given a new role in May 2015 and that there was no such thing as working the notice period.

27. It is also my finding that the employer cannot maintain two stances: that the plaintiff had resigned and when she was working for the notice period she was terminated. The employer's own act of issuing the termination letter negates that it had accepted the termination of the plaintiff. The two acts of resignation and termination cannot co-exist in this circumstance.

28. I therefore find that the plaintiff had not resigned from the defendant company with effect from 29 May 2015. Her employment was terminated at the instance of the employer. Whether the employment was terminated lawfully and fairly is the next issue that I will consider.

B. TERMINATION OF EMPLOYMENT

29. The termination letter is dated 9 September 2015 and was tendered in as exhibit P Ex – 5. The letter of termination is axiomatic of the fact that the plaintiff was terminated. Whether the termination was lawful needs examination of the reasons for which the plaintiff was terminated and the procedure invoked in terminating the plaintiff. If the plaintiff can establish that it had just causes to terminate the plaintiff and that proper procedures were followed, the termination will be lawful.

30. I will first of all examine the reasons for the termination. To examine the reasons I will turn to the termination letter and outline the contents in full. It reads:

“I am writing to you in regards to the summary dismissal of your employment with PA Lal Holdings with immediate effect pursuant to clause 7.0 of your contract of employment.

Our decision is based on your failure to adhere to policies set out by the company and we consider that your actions constitute serious misconduct warranting summary dismissal in

accordance with the Employment Relations Promulgation 2007 (Promulgation No. 26 of 2007) Part 5, Point 33 –(1) –(a) where a worker is guilty of gross misconduct.

You will be paid any accrued entitlements and outstanding remuneration less any money due to the company in accordance with the law, up to an including the last date that you were present at work.

You are required to hand over all company assets, contracts, documentation, files, customer details, keys and any other company property prior to your departure”.

31. It is clear from the letter of termination that the plaintiff was terminated for gross misconduct. The gross misconduct was as a result of not complying with the company policies. The letter of termination is very vague. It does not give the employee any specific(s) of what actions of hers amounts to non-compliance of the company polices which was deemed as gross misconduct. The letter also fails to provide or outline the company policies that were breached.
32. With the letter that was sent to Mohini Lata, she was left to speculate what she did that warranted summary dismissal. A letter of this nature breaches the legislative requirement to give to the worker written reasons of the dismissal. This letter hardly serves any purpose of reasoning. It is as bad as not providing any reasons to the employee. I consider the letter of termination as unfairly precluding the employee from knowing the reasons for being terminated.
33. The spirit of the legislation is that the parties operate in good faith towards each other during the term of the employment relationship and when the relationship is being ended by a party. An employee who is terminated from employment for a lawful cause needs to know and understand why he or she is being dismissed.
34. If the letter does not specifically states the reason for dismissal, the employer cannot require the court to examine the reasons it provides at the trial to determine the justification of the

causes for termination. The employer is precluded from relying on any reasons that it has not stated in the letter of dismissal to justify the termination.

35. The court cannot and will not endorse the employer's conduct of drafting termination letters which does not specifically mention the reasons for termination. To do so would amount to granting the employer an unfair advantage. The unfair advantage arises in this way: *if the employer is allowed to rely on a general allegation in a letter of dismissal, at the trial it will then have a free reign to rely on matters that did not form the basis of the dismissal.* This is what has happened in this case. I will show how the employee is unfairly dealt with by the employer.
36. In this case, it is only during the filing of the defence that the employer once again vaguely states that the plaintiff's act of insubordination, sabotage, abuse of office and theft has led to her dismissal. Once again no specifics are mentioned. It is not said in the defence as to what amounted to insubordination, sabotage, abuse of office and theft. All that the defendant says is that these acts were committed when the plaintiff worked her notice period.
37. The specific allegations were only outlined during the trial. How can the employee be expected to address those specific matters when it was not brought to her attention any earlier? This is a very unethical and unfair act of the employer which if endorsed by the courts will impact greatly on the workers' rights.
38. In future matters, some employers, if they wish to remove the workers, will make some general allegation against the employee and subsequently find as many matters as they discover to rely on the trial. This case must set a precedent to the employers that if they are to terminate the employee summarily for reasons the law allows them to, it is of utmost importance that the specific reason for the termination be mentioned in the letter of dismissal.
39. In order to avoid the employer from taking unfair advantage over the employee, the allegations raised during the trial cannot be accepted as allegations for which the plaintiff was terminated. As such, those allegations will not be determined to find whether the termination was justified as they were not the basis for the dismissal.

40. All that I need to determine is whether the employee has breached the company policy thereby being guilty of misconduct. Since there is no specific misconduct mentioned, I find that the employer did not have and show a proper cause to terminate the employee. If it did, the cause would be specifically mentioned in the letter of dismissal. I need not go any further than this in determining whether the employer had a lawful cause to terminate the employee. However I wish to reflect on some of the evidence to show how unfair it would be if the employer is allowed to rely on allegations made at the trial to justify the termination.
41. Mohini Lata indicated in her evidence that she thinks that she was terminated for what happened on 13 August 2015. She says that it was a Thursday and she was really sick. Marissa Lal kept asking her to do some work to which she responded that she was not well. According to Mohini she was given a new position with new roles and she was taking time to learn. Marissa Lal insisted that the work allocated to her must be finished before close of business. Mohini says that Marissa kept shouting at her.
42. Marissa then had a meeting and Mohini says that she attended the meeting. It was from that meeting that Mohini says that she was accused of throwing a pile of stock cards and the company telephone on the table or on the table towards Marissa (*different versions by the employer*) which allegation Mohini denies.
43. Mohini testified that on the following day she went on leave and then after the weekend she also took leave on the Monday. When she was at home on this Monday being 17 August 2015, she received a letter which was dated the same day of 17 August. The letter was tendered in as exhibit P Ex-4. I have made reference to this letter earlier in the judgment.
44. The letter was asking for Mohini to attend a meeting on 18 August 2015 to discuss certain matters including what allegedly happened on 13 August 2015. The letter accused Mohini of forcibly throwing a mobile phone and stock cards in relation to materials posting.
45. Mohini said that she attended the meeting with her son. From the employer's side Mr. Richard Lal, Mr. Lawrence Robert, and Mr. Gardener Whiteside were in attendance. In the meeting only the incident of 13 August 2015 was discussed. She responded by saying that

those who made the allegations must be there. It was then in the meeting that she was suggested to take 3 weeks leave. No other reasons were given and so she proceeded to take leave.

46. When she was on leave, she was called by Gardener Whiteside to attend another meeting which she did. In that meeting Gardener Whiteside stated to her that she was made redundant and that she will get a package which included \$9,000 and a good reference which she did not accept. She continued to be on leave when she was handed the termination letter at home.
47. Mohini said in her evidence that she was proposed the redundancy because of the 13 August incident. She says that from the termination letter she does not understand the reason why she was sent home.
48. I am in a similar position as Mohini. From the termination letter, I cannot understand why she was terminated. The employer's witnesses stated that Mohini should know why she was terminated as her conduct was always being discussed with her and she was provided counselling on various occasion.
49. I believe that in an employment relationship, a lot of things can happen between the two parties. That does not mean that the employee should always know that whatever is happening between the parties will lead to termination. If the employer is to rely on any one of the act or inaction of the employee to remove him or her, it must state specifically what it relies on.
50. I will now turn to the defendant's case theory. In its pleadings, the defendant states that Mohini was terminated because of acts of sabotage, insubordination, abuse of office and theft when she worked the notice period. Ms. Renee Lal, counsel for the employer extensively questioned Mohini on her conduct such as doing private shopping during office hours, asking the tea lady to prepare her food to take home, asking the tea lady to clean her house and the house of her children during office hours, using and sending company vehicle to do personal work, sending company information to personal account, and threatening the superiors through text messages.

51. The evidence of the vehicle runs by the driver (*D Ex- 1*) shows that these incidents which the employer is relying on took place before the date of the letter of resignation. So the employer cannot say that she misconducted herself during the time when she was working the extended notice period.
52. This evidence also supports my finding that the employer is relying on matters which it initially did not have in mind to justify the termination notwithstanding that it is not clear from the termination letter what it had in mind when the same was issued.
53. It was also insinuated by the employer's witness that Mohini confirmed her resignation when she was called for a meeting on 18 August 2015 to discuss her conduct. In the same breath, the employer's evidence also suggested that when she was asked to go on leave on 18 August 2015, she was to have come back to work after 10 days which she failed to do. I am surprised that the employer is taking various forms of defence which was not specifically pleaded. First, Mohini cannot confirm her own resignation when it was rejected by the employer. She has to give a fresh resignation. How can the employer rely on an ineffective resignation letter? Second, the employer should establish how long she was on leave for and when she was to report to work. There is no records from Mohini's file produced to the court to establish that she was to report to work and she did not. The line of evidence given and the defence taken by the employer shows the employer's concoction of the facts. I find that the proverbial saying "*a drowning man will clutch at a straw*" applies very well to the employer in this case.
54. When Lawrence Robert being the employer's Group General Manager and Accountant gave his evidence in chief, he said that when the dismissal letter was given to Mohini there were various concerns the company had which included abuse of company vehicle where she used the company vehicle to do personal errands, overpaying herself for period of work she was not in office, abuse of petty cash money, threatening him, sending company information to personal accounts to use against the company and sending threatening messages to him.

55. In regards sending company information to her personal accounts, Mr. Robert's evidence was as follows:

“When she was terminated, we checked the computers and we saw she sent emails to her personal address”.

56. It is clear from Robert's evidence that at the time of the dismissal, this matter was not discovered and relied upon to terminate the employment. This piece of evidence itself supports my finding that the employer by writing a general reason for dismissal can very unfairly rely on matters which it did not dismiss the employee for. The employer is conveniently taking advantage of its own wrong by not specifying in the dismissal letter the specifics of the conduct of the employee which amounts to gross misconduct.

57. In cross-examination Mr. Robert stated in no uncertain terms that when he wrote the letter of dismissal he had a lot of incidents in mind for example the 13 August incident and the other incidents that happened. In re-examination he stated that the letter of dismissal also included other issues such as her non-co-operation, trying to be her own boss, blackmailing and so on. He very specifically agreed that the letter of dismissal does not specifically address those issues.

58. Mr. Robert's evidence shows how the employer took advantage of its dismissal letter containing vague reasons for termination. I could notice in the evidence how Mr. Robert, as he went along giving evidence, conveniently brought in all he could think of to justify the termination. This is the very mischief that the legislation tries to protect the employee's against: for the employer to take undue advantage at the trial to speak on allegations which were not the basis for the dismissal in the first place.

59. What concerns me further is when Mr. Robert also went onto say that during the meeting with Mohini, the employer tried to keep her at work as long as she agreed in the meeting to co-operate. When Mohini's attitude showed that she would not change, then she was offered a settlement sum for her long service and retirement.

60. This evidence of Mr. Raju shows that with all the alleged conduct for which Mohini was terminated, the company was prepared to keep her as long as she co-operated. That evidence negates the defence that the company treated her conduct as serious enough warranting dismissal at the time. So what was it that caused the termination, her alleged misconduct or her not agreeing to co-operate with Marissa and Lawrence Robert? The employer seems to be relying on another reason for termination and not the alleged misconduct.
61. My purpose of delving into the evidence was for the purposes of demonstrating the unfair advantage the employers can have if allowed to rely on dismissal letters which makes general allegations lacking in details about the employee's conduct which constitutes lawful cause to terminate the employee. I need not deal with other evidence.
62. It is now for me to examine the procedure that the employer should have invoked to terminate the employment of Mohini Lata. The procedure is outlined in the ERA. The first is the procedure outlined in s. 33(2) of the ERA. It states that the employer must provide to the worker with reasons in writing for the summary dismissal. Reasons in this context means specific reasons with which the worker is informed of the actual conduct that amounts to gross misconduct. I do not find that the employer complied with this provision of the law. My earlier discussion is applicable.
63. The second requirement is that the worker must be paid on dismissal the wages due up to the time of the worker's dismissal. This is outlined in s. 34 of the ERA. Mohini Lata gave evidence that she should have been paid wages for two days that she was away on sick leave being 14 and 17 August 2015 but she was not paid for those two days. The employer through its witness Marissa Lal admitted that the sick sheets pertaining to these days were received on 28 August 2015 which is 11 days prior to the termination of the employment.
64. The employer could not establish that the wages for these two days were paid to the employee. All the witnesses could say was that she should have been paid or that they do not know whether it was paid. The onus is on the employer to show that proper procedures were followed and in absence of any concrete evidence, I find in favour of the employee that the

wages for two days were not paid. It then follows that the second procedure was not complied with either.

65. The third procedure is outlined in s. 30(6) of the ERA which states that *“upon termination of a worker’s contract or dismissal of a worker, the employer must provide a certificate to the worker stating the nature of employment and period of service”*. There is no evidence that the employer had met the requirement of the certificate of service to the employee. I find then that there was shortfall in compliance of the procedure set out by law in carrying out the dismissal.
66. The employer is saying that they provided Mohini a right to be heard before she was terminated. In summary dismissal cases, the legislation does not impose a burden on the employer to provide to Mohini a right to be heard. I need to examine this issue as it would not advance the employer’s case.
67. I now turn to the employee’s allegation that she was unfairly terminated from the employment. To find whether the termination was fair, I must determine whether the employer had conducted itself in a manner which caused the employee humiliation, loss of dignity and injury to her feelings when carrying out the dismissal. If the employee suffers these feelings arising out of the fact of the dismissal then that does not amount to unfair dismissal.
68. It is not disputed that Mohini Lata was handed the termination letter when she was at home on leave and that the employees of the defendant company had left the letter at her gate to be picked up by her as she would not receive the same by hand. There were no remarks or unnecessary behavior by the servants and/or agents of the employer which would cause any humiliation to the employee or cause injury to her feelings. I do not find that in carrying out the dismissal the employer had conducted itself in an unfair manner. I therefore find that the termination, though unlawful, was carried out fairly.

C. REMEDIES

69. I will refer to each claim by Mohini and determine the extent of award that is justified on the facts of the case. The largest portion of Mohini's claim consists of wages for a period of 3 years. She claims this amount on the basis that she would have reached 55 in 2018. She says that she has spent almost all her working life with this employer and when she was terminated she tried to find employment but she could not due to her age. She did not apply but she approached those she knew and she could not secure work anywhere.
70. The employer did not challenge Mohini's evidence that she could not find work given her age and what types of work she could have found. The employer has to also take responsibility for not providing the employee with any certificate of service evidencing her employment with them for such a long period. The purpose of a certificate of service is to act as evidence of employment and the period of service which can be furnished to the new employer when requested.
71. Had it not been for Mohini being terminated, she would have worked for quite some time for the company. She would have worked perhaps beyond 55 as she was working for a private company where the retirement age of 55 as in the public service does not apply.
72. The question that I am faced with is whether she should be given the 3 years wages as claimed by her. S. 230 (1) (b) of course allows for reimbursement to the worker of a sum equal to the whole or any part of the wages or other money lost by the worker as a result of the grievance.
73. I do not have any contrary evidence to disregard the plaintiff's evidence that she approached the people known to her to be employed but due to her age she could not secure another employment. To that end I accept that the plaintiff tried to mitigate her loss and having worked for so many years at one company and being terminated at the age of 52, she was not able to find any work. I find that there is no acceptable reason why her claim should not be allowed except that she has not established in her evidence as to when in the year 2018 she would have reached 55. Her evidence should have been clear in this regard.

74. I appreciate that in her case she would or could have worked beyond the age of 55 but since she has limited her claim up until she reaches the age 55 in the year 2018, I will grant her lost wages for 2 years 6 months only. If she had given clear evidence on when in year 2018 she would have reached 55, I would have granted lost wages till that date.
75. In most cases I expect the workers to be able to find work after at least one year but in this instance that cannot be expected. The employee has almost reached her retirement age. She will not easily find a civil service job. Even at the private sector her age has been a hurdle for her.
76. To calculate lost wages I must ascertain what Mohini earned. It was not disputed by the employer that she was paid a sum of \$352.00 per week. If this evidence was to be refuted, the employer could have easily tendered the employees pay slip. For a year Mohini would thus be paid a sum of \$18,304. For 2 ½ years her wages would calculate to \$45,760.
77. The next claim is the unpaid FNPF. If the employee worked, she would have got her FNPF contributions paid by the employer until she reached 55. The contribution by the employer would be 10 percent of her gross wages. I find it fair and prudent to award her 10% on the sum that I have calculated as lost wages for her. I therefore calculate and award her loss of benefits in the form of lost FNPF contributions in the sum of \$4,576. I will not award any interest on this amount. Ordinarily, Mohini would have collected compound interest if the money was deposited in her FNPF account. However, I find that she can deposit the lump sum that she is awarded and gain interest on that.
78. The employee is also entitled to 2 days of sick leave. She was not paid for 14 and 17 August 2015. Her two days wages calculates to about \$140.80. I have calculated her daily wages to arrive at the 2 days wages. I have in mind her job description that says that she was to work from Mondays to Fridays and at times on Saturdays too. To work on the daily wages I have only used 5 days as her standard working days.
79. The next aspect is the long service leave pay in the sum of \$2,500 that she would have received if she had worked for further 2 years. That was the benefit that she would have been

entitled to if she was not terminated. I find that for her such long service she should be awarded that amount and I so grant her that sum.

80. On the question of interest I find that this should not be awarded because if Mohini was a weekly wage earner, it was not established that she was able to save substantial amount of money to accumulate interest on the same. Now she may be able to after the judgment sum is paid up. I therefore do not find that the award of pre judgment interest is justified.

81. On the issue of costs I assess costs summarily in the sum of \$5,000 to be paid to the plaintiff. Costs were incurred in filing the claim and other associated documents to prepare the matter for the trial. There will be costs for preparation and conducting the trial as well.

Final Orders

82. In the final analysis I find that the plaintiff was unlawfully dismissed from her employment. Although the termination was unlawful it was carried out fairly.

83. I therefore make the following orders:

a. The employer to pay to Mohini Lata the following sums within 21 days of the judgment:

- *Lost wages for 2 ½ years:* \$45, 760
- *FNPF on lost wages:* \$4, 576
- *2 days wages (14 and 17 August 2015):* \$140.80
- *Long Service benefit:* \$2,500

TOTAL: \$52, 976.80

b. The employer is to also pay to the employee costs in the sum of \$5000 within 21 days.

c. The total sum payable to Mohini Lata including costs is \$57, 976.80.

d. The parties shall be at liberty to apply to the court to correct any calculation errors.

.....
Hon. Madam Justice Anjala Wati

Judge

27. 11. 2020

To:

1. *MC Lawyers for the Plaintiff.*
2. *Lal Patel Bale Lawyers for the Defendant.*
3. *File: ERCC 08 of 2016.*