

**IN THE EMPLOYMENT COURT**  
**AT LABASA**  
**APPELLATE JURISDICTION**

ERCA No. 02 of 2019

**IN THE MATTER** of an  
appeal from the decision of the  
Employment Relations  
Tribunal (“the Tribunal”) in  
Grievance No 72 of 2017

**BETWEEN:**           **LAND TRANSPORT AUTHORITY**

APPELLANT

**AND:**               **DANIEL IRVINE**

RESPONDENT

**Counsel**            : **Mr. Ram. A for Appellant**  
                          : **Mr. Vosarago for Respondent**  
**Date of Hearing**    : **29.8.2019**  
**Date of Judgment** : **18.08.2021**

**JUDGMENT**

**INTRODUCTION**

1. This is an appeal from the decision of Employment Relation Tribunal handed down on 22.3.2019, where the Grievor- Respondent (Respondent) was reinstated and also awarded compensation. Employer-Appellant (Appellant) being aggrieved by said decision appealed. Respondent was employed as Team Leader - Public Transport with the Appellant in its Regional (Northern) office at Labasa. Appellant had received a complaint from an applicant whose application for Road Route Licence (RRL) was rejected by front line officer, but there was no evidence that Respondent was even informed of this. The rejected applicant was successful in lodgment of an application for RRL in Suva, on 12.5.2016 and without processing that it was forwarded to Regional Office .This was received at Regional office at Labasa on 31.5.2016. Before receipt of this, another application that was lodged at Regional

Office at Labasa on 19.5.2016 was processed and advertised. The paper advertisements were done by Regional Office the relevant date of receipt of the application was the receipt of the same at Regional office, hence logically complainant's application which arrived to Labasa on 31.5.2016 should have got advertised later than an application received on 19.5.2016. There was no evidence that Respondent got the application as soon as it received Regional Office, but was responsible to supervise work of the subordinates as Team Leader. Respondent was not responsible for alleged delay as the file was with his superior Regional Manager for 14 days and Respondent had disposed the file as soon as it he received it even without verifying the time table. He had admitted that there was an error on the time table prepared by his subordinate but this was corrected later. The complainant's earlier application to Regional Office, was rejected by his subordinate officer after receiving instructions from Regional Manager. The earlier rejection of complainant's RRL by his subordinate officer was not informed to him either by complainant and or his subordinate officer. So, there were no grounds for summary dismissal for delay or rejection of application for RRL by another officer. So the decision of the Employment Tribunal is affirmed. Appeal dismissed.

#### **FACTS**

2. Respondent was employed as a Team Leader - Public Transport. His duties inter alia included RRL application process at a supervisory level. According to his job description he had to 'ensure that all applications are processed according to requirements'.
3. A person had applied for RRL in Northern Province, but his application was rejected by Regional Office by the person who received it without consulting Respondent.
4. Respondent was reporting to his superior who was the Regional Manager (Northern). There was no clear guide lines and or procedure regarding process of applications for RRL by front line officers.
5. Front line officer who had received the application of the complainant had rejected it upon instructions of the Regional Manager.
6. Complainant subsequent to this rejection had lodged RRL in Suva, on 12.5.2016 and it had reached Regional Office Labasa on 31.5.2016, but again this application received from Suva was held in the office of Regional Manager who was the head of the Regional Office.
7. There was no evidence Respondent had delayed. But another application that was filed on 19.5.2016 was advertised prior to the complainant's application that reached Labasa on 31.5.2016 and also held by Regional Manager for further 14 days.

8. Respondent had admitted that he had not checked the time tables that were prepared by his subordinate officer.
9. Upon the complaint of delay of RRL Respondent was summarily dismissed. The reasons or justification for summary dismissal was given on 1.3.2016.
10. Respondent had sought reinstatement and compensation and Employment Tribunal had granted both.
11. Being aggrieved by that Appellant had appealed against said decision.

### ANALYSIS

12. Respondent was summarily dismissed by Appellant. This dismissal related to complaint regarding rejection of application for RRL and also acceptance of application of RRL in Suva and alleged processing of an application for RRL by another person, in order to grant advantage to said second applicant.
13. Respondent was dismissed on 16.2.2017 by a letter and it was justified with reasons on 1.3.2017.
14. The decision handed down on 22.3.2019 reinstated the Respondent in the employment and also granted compensation with lost salary.
15. Being aggrieved Appellant , made an appeal on following grounds;
  1. The Learned Magistrate erred in law and in fact in holding that the Appellant unlawfully dismissed the Respondent, given the circumstances of the matter including the evidence at trial.
  2. The Learned Magistrate erred in law and in fact in failing to provide reasons for the unlawful dismissal finding.
  3. The Learned Magistrate erred in law and in fact in failing to hold that the Respondent's refusal to accept Vishnu Holding Limited's application was (sic) tantamount to gross misconduct.
  4. The Learned Magistrate erred in law and in fact in holding that the Respondent did not have a part in causing the delay contrary to evidence.
  5. The Learned Magistrate erred in law and in fact in holding that there was no delay on the Respondent's part when the Respondent's initial rejection set in train the lodgment in Suva and the subsequent delays.
  6. The Learned Magistrate erred in law and in fact in holding that the Respondent's role in the saga was almost minimal to zeal when the Respondent as Team Leader was

- responsible for Kunal Chand's conduct and needed to conduct an oversight and supervisory role.
7. Learned Magistrate erred in law and in fact in holding that there was no evidence that the Respondent did not have the skills required for the post.
  8. The Learned Magistrate erred in law and in fact in holding that the Appellant's charges were bad for duplicity.
  9. The Learned Magistrate erred in law and in fact in filing to take into account the result or effect of the Respondent's misconduct such as duplicate application by the competitor being accepted, the complaints, the investigations, the public humiliation of the Land Transport Authority Board, the deferring of the application resulting in a nationwide deferral and the disrepute faced by the Appellant.
  10. The Learned Magistrate erred in law and in fact in not holding that there was 53 days delay caused by the Respondent's rejection of the application.
  11. The Learned Magistrate erred in law and in fact in holding that the Respondent was not given a chance to respond to the investigation when the Respondent had been summarily dismissed for a serious misconduct after an interview.
  12. The Learned Magistrate erred in law and in fact in holding that breaches as set out in the justification letter were vague and ambiguous despite the Respondent being interviewed and having knowledge of the wrong being investigated.
  13. The Learned Magistrate erred in law and fact in holding that due to the record of interview not being tendered, the oral testimony of the investigator was disregarded.
  14. The Learned Magistrate erred in law and in fact in holding that the Appellant failed to establish a serious misconduct warranting instant dismissal despite evidence to the contrary.
  15. The Learned Magistrate erred in law and in fact in holding that the Respondent be reinstated and loss of salary be compensated by the Appellant when the Respondent's application was for compensation only.
16. Both parties after oral hearing had submitted written submissions.
  17. Appellant in the written submission had addressed the appeal grounds clustering them together and for convenience I adopted the same.
  18. Ground 7 and 15 are withdrawn. But for completeness Respondent had also sought reinstatement in his application (see page 4 of record). Respondent had required skills for the post he held.

Appeal Grounds 1, 2 and 14

19. From paragraphs 10 of the decision handed down on 22.3.2019, Resident Magistrate had analyzed the findings. So there is no merit in the allegation that there were no reasons given in the said decision for the findings.
20. The two main complaints of the complainant was rejection of his application for RRL by front line officer at the counter, without seeking Respondent's directions. So Respondent cannot be held responsible for that rejection as he was not informed of that rejection.
21. Next allegation of the said applicant was that his application which was accepted in Suva on 12.5.2016 was advertised later than another application for RRL lodged and accepted on 19.5.2016. The application of the complainant received at Labasa office only on 31.5.2016 and it remained with Regional Manager for 14 days.
22. Even without this 14 days delay at the hand of Regional Manager, in the normal process it should be advertised after an application lodged directly at the regional office on 19.5.2016 and this cannot attribute to inefficiency or lack of skills of Respondent. There was no evidence that Respondent had delayed any of the applications for RRL in order to offer undue advantage to one party.
23. There was no reason to delay the complainant's application by Respondent as it had already arrived to the Regional Office on 31.5.2016 which was later than application lodged to his office on 19.5.2016
24. Respondent had admitted that he had not checked the time tables prepared by his subordinate officer who made mistake in the preparation of such time table. A mistake by subordinate officer and failure to identify that cannot be considered as corrupt practice as alleged in the justification for summary dismissal. There were no evidence to justify any of the reason given in letter of 1.3.2017.

Ground 3

25. There was no evidence that Respondent played any part in the rejection of an application for RRL by the complainant. This was done by his subordinate officer on directions of Regional Manager who was the Respondent's superior.

Grounds 4, 5, 9 and 10

26. There was no evidence that Respondent was informed of the rejection of complainant's RRL and subsequent lodgment at Suva on 12.5.2016 and also its arrival to Regional Office at Labasa, on or around 31.5.2016.

27. It should also be noted that it had taken 14 days for the application to be forwarded to Regional Office at Labasa. It is obvious that these applications for RRL were not processed diligently either in Suva or Regional Offices.
28. In the circumstances Respondent's failure to verify the timetables cannot be considered as corrupt practice to delay an application he received later. There was no evidence of Respondent delaying it or keeping it for longer period than necessary. The only thing that can be found against Respondent was that his failure to verify the time table prepared by his subordinate. This cannot be reason for summary dismissal. The allegation that some undue advantage given to another applicant, was not proved. There was no reason to do so as Respondent had received the application for RRL nor or around 14.6.2016 which was almost one month after the application lodged on 19.5.2016.
29. It is logical to process an application received on 19.5.2016 prior to an application received on 31.5.2016 at the Regional Office. There was no evidence of Respondent dodging the complaint's application to buy time. He had admitted that he did not verify the time tables, but that cannot attribute to corrupt practice or directly for delaying it.

Ground 6

30. As said in above, Respondent cannot be held responsible for delaying only on his failure to verify the time tables with other operators. There was no motive to do so as he had received it nearly one month after the application lodged on 19.5.2016

Ground 8

31. Duplicity is not a ground for rejection of the reasons given in letter dated 1.3.2017. The court below though said that there was duplicity in the alleged reasons for summary dismissal did not rely on that alone. There were no evidence produced that Respondent was 'habitual or substantial neglect' of his duties. If so why weren't even a warning letter issues to him. An employee who was working in real environment may not act in ideal environment hence there can be some deviation from ideal behaviour. The issue was Respondent not verifying time table prepared by subordinate officer. When a unit works as a team, an experienced person's work may not be supervised all the time by Team Leader. This was not a strange behaviour of a team leader, considering circumstances.

Grounds 11 and 12

32. It is an admitted fact that no reasons were given when the Respondent was dismissed summarily on 16.2.2017. So this letter cannot imply that he was dismissed for previous interview done nor or around June, 2016.

Ground 13

33. Respondent had admitted that he had not verified time table prepared by his team member. This cannot go further than that without any evidence against Respondent. So the burden was with the employer to prove that it amount to gross misconduct.

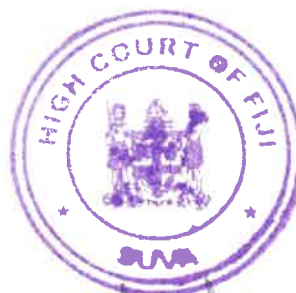
### CONCLUSION

34. Resident Magistrate had given reasons for the decision and analysed evidence. Appellant had failed to establish any of the reason given in letter of 1.3.2017 for justification of summary dismissal. Hence the Appeal is dismissed and decision of Resident Magistrate is affirmed. The cost of this application summarily assessed at \$8,000, considering the circumstances of this case. The delay is regretted

### FINAL ORDERS

- a. Appeal is dismissed and decision of Resident Magistrate affirmed.
- b. Cost is summarily assessed at \$8,000.

Dated at Suva this 18<sup>th</sup> day of August, 2021.



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Justice Deepthi Amaratunga  
High Court, Suva