

**IN THE EMPLOYMENT RELATIONS COURT**

**AT SUVA**

**ORIGINAL JURISDICTION**

**CASE NUMBER:** ERCC 12 of 2016

**BETWEEN:** **DR. DILAWAR GREWAL**

**PLAINTIFF**

**AND:** **UNIVERSITY OF THE SOUTH PACIFIC**

**DEFENDANT**

**Appearances:** *Mr. P. Knight for the Plaintiff.*

*Mr. H. Nagin and Ms. M. Rakai for the Defendant.*

**Date/Place of Judgment:** *Friday 15 September 2023 at Suva.*

**Coram:** *Hon. Madam Justice Anjala Wati.*

---

**JUDGMENT**

**A. Catchwords:**

*Employment Law - Unlawful and Unfair Dismissal - whether the reasons to terminate the worker valid- whether proper procedures under the contract and the law followed to terminate the worker - whether the employer conducted itself in a manner that caused the worker humiliation, loss of dignity and injury to the feelings of the worker.*

**B. Legislation:**

1. *Employment Relations Act 2007 ("ERA"): ss. 30; and 34.*
-

**Cause**

1. The plaintiff was summarily dismissed from his employment on 13 June 2016 for gross misconduct. He brings this action for damages for unlawful and unfair dismissal.
2. Dr. Dilawar Grewal [**"Grewal"**] was employed by the defendant, the University of the South Pacific [**"USP"**] as Vice President Administration from 2014 for a period of 5 years conditional upon the successful completion of a one year probationary period.
3. After his one year of service, a meeting was held on 27 May 2015 to review Grewal's probationary performance.
4. The meeting of 27 May 2015 was attended by the plaintiff, the Vice Chancellor Professor Rajesh Chandra and the Manager Human Resources Operation Ms. Agnes Kotoisuva. The minutes of the meeting was drafted by Ms. Agnes Kotoisuva. It was edited and agreed by the plaintiff and Professor Rajesh Chandra.
5. On 24 June 2015, Grewal forwarded the meeting minutes to Professor Biman Prasad who at that time was the leader of one of the political parties namely National Federation Party. Mr. Biman Prasad by that time was no longer part of USP. After 10 months, being on 22 April 2016, the contents of the minutes appeared on Fiji Leaks Blog site. When this happened Professor Rajesh Chandra was very concerned as to how the minutes had been leaked. He suspected that his email was compromised. He asked the Head of the Technology Department to carry out an investigation through which it became apparent that Grewal had sent the email with the minutes to Mr. Biman Prasad.
6. It was clear from the evidence of Grewal that when the information was published on Fiji Leaks Blog site, Grewal was disturbed and he went to see Professor Rajesh Chandra and expressed his concerns about how the information had been leaked to Fiji Leaks. Grewal maintains that he did not leak the information to Fiji Leaks. He says that he had only sent the information to Mr. Biman Prasad. The employer says that it did not know

that Grewal had sent this minutes to anyone including Mr. Biman Prasad and so it had to order the investigation to find out who had leaked the same.

7. Grewal's position is that he had never denied sending the email containing the minutes to Mr. Biman Prasad and as such he should not be held liable for the leakage to Fiji Leaks.
8. When the Technology Department of USP presented its report to the Vice Chancellor Professor Rajesh Prasad, he then delegated his powers to Professor Derrick Armstrong, the Deputy Vice Chancellor Research, International and Innovation to deal with the allegations of gross misconduct against Grewal. On this same day, Professor Rajesh Chandra had also appointed Professor Richard Coll, Deputy Vice Chancellor Learning, Teaching and Student Services to investigate the issue of gross misconduct against Grewal and report his findings to Professor Derrick Armstrong to deal with the issue of gross misconduct.
9. Then on 7 June 2016, Professor Richard Coll wrote a letter to Grewal outlining the allegations of gross misconduct and asked for his response within 2 working days.
10. The plaintiff responded by a letter dated 9 June 2016 denying the allegations of gross misconduct following which the plaintiff was summarily dismissed by a letter dated 13 June 2016 which reads as follows:

***“Re: Summary Dismissal for Gross Misconduct***

*I have received the recommendation from Professor Richard Coll after he considered your response dated 9<sup>th</sup> June 2016.*

*The gross misconduct on your part is clear from the investigation carried out and your own response dated 9<sup>th</sup> June 2016.*

*As per the delegated authority from the Vice Chancellor to me, you are hereby summarily dismissed for gross misconduct in accordance to clause 6.1(a)(i) of the Discipline Ordinance for leaking confidential information of the University to a third party on 24<sup>th</sup> June 2015.*

*Please take note accordingly.*

*Signed by  
Derrick Armstrong  
Deputy Vice - Chancellor Research and International”*

11. It is the plaintiff's claim that in the meeting of 27 May 2015 to review his probationary performance, Professor Rajesh Chandra expressed his concern at any leakage of information to third parties from Senior Management Team. The plaintiff says that Professor Rajesh Chandra also expressed his concern at the plaintiff's friendship with Dr. Gurmeet Singh who was another employee of USP and was known to be a close friend of Mr. Biman Prasad. The plaintiff says that Professor Rajesh Chandra asked him to reconsider his friendship with these two persons.
12. The plaintiff says that he was concerned at Professor Rajesh Chandra's comments regarding his friendship with Dr. Gurmeet Singh and Mr. Biman Prasad so he relayed this information to Mr. Biman Prasad and as evidence of what was said in the meeting he also sent the meeting minutes of 27 May 2015. Grewal says that the document was not marked confidential and since the meeting discussed his probation, he was the owner of the document, it belonged to him and he had the prerogative to decide whether he wants to share it with anyone.
13. Grewal says that he perceived Professor Rajesh Chandra's views as a threat to terminate his contract due to his friendship with the two persons which in his view was wrong as his personal friendship with his friends should not have been a factor in determining the continuity of his employment. Grewal says that he was disturbed and wanted Mr. Biman Prasad to know that his friendship with him was used to decide his career. Grewal said that he did not want that to happen so he shared the information with Mr. Biman Prasad.
14. When Mr. Biman Prasad received the email, he spoke to Dr. Mahendra Reddy, the Minister for Education. Mr. Biman Prasad informed Dr. Mahendra Reddy that the University was involving the government in determining Grewal's contract. Dr.

Mahendra Reddy then, as his evidence reveals, informed Mr. Biman Prasad that he will speak to Professor Rajesh Chandra as a personal friend and try and ascertain the issue with Grewal's contract. Dr. Mahendra Reddy said that he informed Mr. Biman Prasad that he could not do anything officially as he had no powers to intervene in any decision of the University. Dr. Mahendra Reddy said that he could approach Professor Rajesh Chandra as he knew him personally. Mr. Biman Prasad, Dr. Mahendra Reddy and Professor Rajesh Chandra all worked at the University together at one point in time and they knew each other very well.

15. When Dr. Mahendra Reddy spoke to Professor Rajesh Chandra, it was revealed to Dr. Mahendra Reddy that Grewal had some issues on his performance. However, it was agreed that Grewal would be given another 6 months' probation to decide whether he could continue with his contract. That was accepted by Grewal. He completed his probation successfully and on 23 December 2015 he was informed in writing that he had completed his probation period successfully. After that the Fiji Leaks saga triggered the investigation against Grewal and the subsequent termination.
16. The plaintiff contends that his email to Mr. Biman Prasad on 24 June 2015, does not amount to leaking confidential information of the University to a third party and thus did not constitute gross misconduct and that he ought not to have been dismissed from his employment.

***Defence and Counter Claim***

17. The defendant says that it had a valid reason to terminate the employment of the plaintiff as he had breached the contract of employment by disseminating confidential information being the meeting minutes of 27 May 2015 to a third party which act amounts to gross misconduct and warranted summary dismissal.
18. It is the position of the defendant that the meeting of 27 May 2015, did not only address the plaintiff's performance in the probationary period but other matters of the University as well. In any event, the defendant says that the performance report was a confidential document and should not have been disclosed to anyone.

19. The defendant says that in the meeting of 27 May 2015, the plaintiff was reminded that the University will not tolerate any leakage of information by the University's Senior Management Team. In that meeting, the defendant says that the plaintiff confirmed not discussing confidential or Senior Management matters with third parties.
  
20. The meeting minutes appeared in the Fiji Leaks Blog site which the defendant contends brought disrepute to the University. The defendant claims damages for adverse publicity of its confidential information. The defendant also seeks an order restraining the plaintiff from any further disclosures or publication of the University's confidential information and from interacting, interfering and harassing the University's Council, employees and operations of the University.

***Issues, Evidence, Law and Determination***

21. The kernel issue in this case is to determine whether the plaintiff's contract was lawfully and fairly determined. I will also have to determine whether the plaintiff's act of disseminating the information to Mr. Biman Prasad caused it any damage to its reputation, the extent of the damage and whether there is any compensation payable for the loss of reputation. It also needs to be determined whether the plaintiff needs to be restrained in any form from interfering with the affairs of the University and from publishing any further information belonging to the University.
  
22. To determine whether the plaintiff's termination from work was lawful, I need to determine whether the reasons to terminate him from his work was justified. I also need to identify the procedures that the employer ought to have followed in terminating the work of the employee and whether the procedures were followed. If it was not then the termination will be unlawful for want of compliance with the prescribed procedures for summary dismissal.
  
23. To determine whether the termination of the plaintiff's work was fair, the employer's conduct in carrying out the termination will be examined. If the employer's conduct was unwarranted in carrying out the dismissal causing the employee humiliation, loss

of dignity and injury to his feelings then the dismissal will be unfair. Humiliation, loss of dignity and injury to the feelings of the worker arising out of the fact of the dismissal does not amount to unfair dismissal.

24. I will deal with each claim under a separate head. I must say that the onus to establish that the dismissal was fair and lawful is on the employer.

**A. Unlawful Dismissal**

**(a). Reasons for Dismissal**

25. The first simple question that I need to ask is whether the employer have valid and justifiable reasons to terminate the work of Grewal? Grewal was terminated for gross misconduct. The allegations of gross misconduct is outlined in the USP's letter to Grewal of 7 June 2016 (*Plaintiff's Exhibit 9*) as follows:

***“Allegation***

*There was a leakage of VPA Probation Document at USP. To protect USP and taking into account reputational risks the Chairman ARC instructed and authorized the Director USP Information Technology Services (USPITS) to fully investigate the same.*

*USPITS carried out a thorough investigation and presented its report to the Chairman ARC on 5<sup>th</sup> May, 2016.*

*The report, inter alia, revealed as follows:-*

- “d. On Wed 6/2/2015 8:27 AM Dr. Grewal forwarded the original email from Agnes Kotoisuva sent to him and VC on Monday, June 22, 2015 7:15 PM with subject “FW: Summary of discussion of probation meeting for Dr. Dilawar Grewal - 22<sup>nd</sup> June 2015” and attachment “Summary of discussion of probation meeting for Dr. Dilawar Grewal - 22<sup>nd</sup> June 2015, docx” to external email id [bcprasad91@gmail.com](mailto:bcprasad91@gmail.com)*
- e. On wed 6/24/2015 9:45 AM there is further correspondence from Dr. Grewal's account to external email id [bcprasad91@gmail.com](mailto:bcprasad91@gmail.com) with the email Subject “RE: Summary of discussion of probation meeting for Dr. Dilawar Grewal - 22<sup>nd</sup> June 2015” and attachment concerned.”*

*The email address to which the above emails were sent was that of Dr. Biman Prasad, the leader of National Federation Party.*

*Some very confidential matters relating to VPA Probationary Performance Report have ended up with the blog site of Fiji Leaks.*

**Gross Misconduct**

*This appears to be a serious breach of confidentiality and tantamounts to gross misconduct and totally unbecoming of a person holding the position of Vice- President Administration*

*Therefore in accordance with clause 6 (b) of the Discipline Ordinance of USP I hereby give you two (2) working days from the date of receipt of this letter to respond to me in writing with an explanation in your defence”*

26. Grewal's response to the allegation of gross misconduct was given by a letter dated 9 June 2016. I have summarized the relevant part of his response addressing the allegations. He said as follows:-

1. *The document, the Probation Performance Report, was sent to the personal address of Dr. Biman Prasad, and not to him as the leader of a political party so there was no political agenda.*
2. *The Probation Performance Report does not constitute 'confidential information', because it is personal to him.*
3. *Nowhere in the correspondence from HR does it indicate that the document and its contents are to be treated as confidential.*
4. *That the ownership of the Probation Performance Report rests with him and he has the right to distribute it as he sees fit.*
5. *No 'tangible loss' could accrue to the University by dissemination of the Probation Performance Report, only embarrassment to him.*
6. *There is no evidence that he was responsible for the document or parts thereof being published on Fiji - Leaks.*



7. *That the Vice-Chancellor was aware in 2015 of his communications with the Minister Dr. Reddy and Dr. Biman Prasad.*
8. *That the University has not defined Gross Misconduct. He provided a list of other allegations that he says were either not deemed Gross Misconduct by the Vice-Chancellor, or proven charges of Gross Misconduct, that were dismissed by the Vice-Chancellor.*
27. I need to start off by ascertaining whether the employer has been able to establish that the meeting minutes was a confidential document and the sending of the same to a third party amounts to gross misconduct.
28. Grewal says that the meeting minutes was not confidential document because it was not marked confidential and since it contains issues about him and his performance, he had the right over the document and he could disclose the same to whoever he wanted.
29. The meeting minutes may not have been marked confidential but it was an internal document that not only discussed Grewal's performance but other University matters such as confidentiality and cohesiveness in the Senior Management Team and issues relating to the University Quarters which was USP's internal matter.
30. There was no need for the University to tell Grewal that the document was confidential or that there be a marking on the document that it was confidential. Any employee would know that meeting minutes of any institution is confidential regardless of what was discussed or who was discussed. It is highly concerning that Grewal does not accept this position. He wants the meeting minutes to be marked confidential when it ought to be obvious to him that the minute was confidential.
31. The employer tendered in evidence a document titled ***Human Resources Policies & Procedures – Staff Appraisal: Academic and Professional Staff***. The document was tendered in evidence as Defendant's Exhibit 1. Grewal denies that this document is applicable to him or was a relevant policy at the time of his employment. I accept the evidence of Dr. Mahendra Reddy that a similar policy was there when he was at the University. There may be different versions of this document but what I accept is that

the rule on confidentiality regarding appraisals and review of performances was always the same. I firmly find that no employee can refute that such appraisals are confidential and should remain between the necessary parties and in this case Mr. Biman Prasad was not a necessary party to the document. Sending of this document to him was not necessary. Grewal wanted to turn this internal issue into a political matter and that is what actually happened. Mr. Biman Prasad got frustrated that he was being singled out as he was the leader of the opposition that is why he approached Dr. Mahendra Reddy saying that the University is involving the government in the matter.

32. Dr. Mahendra Reddy and Mr. Biman Prasad's text messages were tendered in evidence by Grewal. The messages were exhibited as Plaintiff's exhibit 27. Dr. Mahendra Reddy was obviously upset that his personal messages which he did not authorize to become part of the proceedings were disclosed by Grewal in court.
33. Going back to Defendant's Exhibit 1, the relevant provision on confidentiality is outlined in clause 2.2 of the Policy. It reads:

*"2.2 Confidentiality*

- 2.2.1 Appraisers must not discuss the contents of the report with anyone other than the appraisee. The outcome of any discussion must be confidential to the two parties but a record must be maintained of the discussions and the dates that they occur.*
- 2.2.1 The agreed actions should be documented and the final record will be kept in the Appraisal file in the Faculty/Section. No other staff member will have access to the Appraisal file apart from the Head of School/Section, subject to the provisions of Section 20.02.08.*
- 2.2.3 Documentation produced for or in the course of an appraisal will thereafter only be used for purposes of Staff Review. Applications for incremental progression, promotion and contract renewal should include the previously completed forms (from those Meetings) as attachments".*

34. The provisions of the above policy ought to have been known by Grewal. He can neither claim that the document was not a confidential nor any ownership of the same. The policy clearly states that the outcome of the discussion is confidential. It therefore is a document on which Grewal cannot claim any ownership. Any dissemination of the document amounts to leakage of confidential information and thus breach of the provision of the employment contract on confidentiality which reads:-

***“Confidential Information***

*Staff shall not, whether during the currency of this agreement or after employment termination for whatever reason, use, disclose or distribute to any person or entity, otherwise than as necessary for the proper performance of their duties and responsibilities under this agreement, or as required by law, any confidential information, messages, data or trade secrets acquired by them in the course of performing their services under this agreement. Any use of USP information which includes, but is not limited to, its business ad students is prohibited except by the explicit permission of the Vice-Chancellor and President. Only after six months after the end of employment is the Vice-Chancellor and President’s permission not required.”*

35. If Grewal did not know before the meeting of 27 May 2015 that the minutes were confidential, then at least on 27 May 2015, he was told by Professor Rajesh Chandra that any discussions in any meeting was confidential and should not go outside the Senior Management Team. The meeting minutes clearly states at paragraph (iv) as follows:

***“SMT Confidentiality and cohesiveness*** – VC & P stated that one of the most important principles of SMT was confidentiality and cohesiveness. He said there should be no leakage whether intentionally or unintentionally outside of SMT on matters already discussed and agreed to in meetings. VC & P mentioned that in the 2013 VOICE Survey, SMT had come out looking bad and he did not want to see a repeat of this.”

36. Despite the above indication from Professor Rajesh Chandra, Grewal goes against the directions and emails the copy of the meeting minutes to Mr. Biman Prasad. That in itself is a breach of directions and amounts to gross misconduct for disobedience of

lawful orders. This breaches the expected standard of behavior outlined in the contract of employment as follows:

***“Standards of Conduct***

*The University expects the highest standards of ethical behaviour by all staff, and as a member of the Senior Management Team, you are expected at all times to act in the best interests of the University. Full details of expectations are outlined in Attachment A.*

*You are expected to uphold USP’s reputation in a manner appropriate to your senior leadership level in a professional manner and to execute your fiduciary and other management responsibilities with the highest standard of care at all times. Such professional responsibilities also extend to your consistent adherence to the USP Staff Attributes (see page 19 of the USP Strategic Plan 2013-2018):<http://docs.google.com/viewer?url=http://www.usp.ac.fj/strategicplan2013-2018>.*

*As a Senior Executive member of the Vice-Chancellor and President’s senior team (SMT), you must act in a manner appropriate to the office you hold. In particular, your actions must sustain and ensure confidences and directions given to you by the Vice-Chancellor and President. As the Vice-Chancellor’s trust and confidence in your strategic leadership judgment, prudent professional advice and perceptive, transformative actions are paramount, this highest standard of fiduciary and care is to be maintained at all times. As a member of the Senior Management Team it is expected that protocols are followed and the team’s interests and decision are supported and adhered to in your role. As a Senior Member of SMT you are expected to lead and model USP’s Values and Staff Attributes.*

*A member of staff shall regard his/her services at the University as a whole time employment and no staff member shall, without the written permission of the Vice-Chancellor and President, undertake any other occupation or interest, including consultancy work. Any consultancy will need to be approved by the Vice-Chancellor and President and will be governed by the University’s consultancy policy. It is not considered as a professional development activity.”*

37. I will come to the issue of gross misconduct and whether Grewal’s conduct amounted to gross misconduct in a while. For now I will turn to the position taken by Grewal. Grewal says that he had to email the report to Professor Biman Prasad as Dr. Mahendra Reddy had requested for this report to ascertain the truth of what had been said in the

meeting. Dr. Mahendra Reddy denied this in his evidence. Dr. Mahendra Reddy testified that he was not even aware of the report. He said he could not have requested for a copy and even if he knew that it existed, he will never ask for one as he knows that the document is confidential.

38. Mr. Biman Prasad testified that he shared the document with Dr. Mahendra Reddy through an email. He further said in his evidence that he told Grewal that he had sent the report to Dr. Mahendra Reddy. Mr. Biman Prasad admitted in his cross-examination evidence that Dr. Mahendra Reddy did not request for the probation report. The relevant portion of the evidence as I had recorded it during the trial is as follows:

*“Q. Dr. Reddy does not acknowledge having seen the minutes?”*

*A. I sent him.*

*Q. Did Dr. Reddy request to send it to him?”*

*A. No”.*

39. There is an obvious inconsistency in the evidence of Grewal and Mr. Biman Prasad on whether Dr. Mahendra Reddy requested for the report. Since Mr. Biman Prasad denies that Dr. Mahendra Reddy requested for the report, I find that Grewal has no basis to justify his actions.

40. I also do not believe Mr. Biman Prasad and Grewal in regards whether the report was sent to Dr. Mahendra Reddy. I accept the evidence of Dr. Mahendra Reddy that he had never seen the report. Neither Mr. Biman Prasad nor Grewal has been able to show to me that any such document was sent to Dr. Mahendra Reddy via an email. If it was, I am sure that Mr. Biman Prasad or Grewal would have made it available in evidence. If both of them have shared private text messages in the evidence then there is no reason why that email containing the report would not be given in evidence when Grewal is relying on that position.

41. Even the text exchanges between Dr. Mahendra Reddy and Mr. Biman Prasad does not have any indication that a report was sent. If it was sent then Mr. Biman Prasad would

not say on 25 June 2015 that he will send the written evidence to him. There would be some text message to say that the report has been sent to him. Grewal cannot blame Dr. Mahendra Reddy to justify that he was asked for the report by the Minister of Education and so he had sent it.

42. In any event, Grewal knew by 27 May 2015 that he could not send the report to Mr. Biman Prasad. If his relationship with Mr. Biman Prasad was a concern to Professor Rajesh Chandra, then it is axiomatic that any leakage of documents to Mr. Biman Prasad would be treated as a very serious issue and will impact the employment of the worker.
43. At this stage I wish to say that Grewal maintains that he had never denied sending the report to Mr. Biman Prasad but denied any leakage to Mr. Victor Lal of Fiji Leaks. That cannot be true. Professor Rajesh Chandra had made his position clear to Grewal regarding his friendship with Mr. Biman Prasad on 27 May 2015. If he was ever informed by Grewal that he had sent the report to Mr. Biman Prasad, Professor Rajesh Chandra would have taken immediate action of dealing with him on the issue of misconduct. He need not have used University's Technology Department's Head to investigate the issue of leakage. Professor Rajesh Chandra only became aware of the leakage when the Fiji Leaks Blog published the report. By then he had already confirmed Grewal to the position.
44. In the meeting of 27 May, Grewal had undertaken not to continue his association with Mr. Biman Prasad. Professor Rajesh Chandra of course wanted to keep education out of politics. Grewal's undertaking appears in the minutes as follows:

*"VPA responded that he did not have a problem not talking to Dr. Prasad but cannot not talk to Dr. Gurmeet Singh as he was a friend. VC & P then stated that the choice was VPA's but if he wanted to keep his trust, then his (VPAs) relationship with Dr. Biman Prasad would make this very difficult. VPA responded that he fully understood VC & P's concern about his relationship with Dr. Biman Prasad and would discontinue talking to him. VC & P stated that he was not going to approve or disapprove VPA's relationships with individuals but he (VPA) needed to choose his friends and associates with this in mind."*

45. After his assurance that he will stop his association with Mr. Biman Prasad, Grewal goes ahead and sends to Mr. Biman Prasad minutes of the meeting he received in June 2015. That of course is a breach of trust prohibited by the contract of employment.
46. Grewal does not wish to take responsibility for the information appearing in Fiji Leaks. He says he did not leak any information to Fiji Leaks. He asserts that he does not know Victor Lal who published this information on Fiji Leaks.
47. I do not find that it is essential for the USP to establish that Grewal gave the information to Victor Lal to publish it on Fiji Leaks. Grewal accepts disseminating the information to Mr. Biman Prasad. That is sufficient to establish breach of confidentiality provisions of his contract.
48. Grewal also raised that the document, the Probation Performance Report, was sent to the personal address of Mr. Biman Prasad, and not to him as the leader of a political party. I find this argument immaterial. Grewal's contract stipulates that confidential information may not be disclosed to "any person". Therefore whether the recipient is a political figure or not is not of any consequence. In this case though, Mr. Biman Prasad was a political figure and he had only one email address which he used personally and professionally as his evidence revealed. How can Grewal then say that he was not politicizing the issue?
49. Grewal also stated that no "tangible loss" could accrue to the University by dissemination of the report. It is immaterial to establish that the University suffered loss of any form to establish gross misconduct. That is matter relevant to its counter-claim.
50. Breach of confidentiality by a senior executive officer of the University such as this worker does constitute gross misconduct. It undermines the University's trust and confidence in the worker as the keeper of a large amount and wide variety of highly confidential information. Gross misconduct is defined by the University's Staff

Ordinance (*Plaintiff's Exhibit 10 - Discipline of Academic, Professional, Administrative, Library and Technical, Intermediate and Junior and Hourly Paid Staff Ordinance*) as "conduct so seriously in breach of the staff member's conditions of service that it results in a breakdown of the relationship of trust and confidence between a staff member and the university, and if proved, warrants an immediate dismissal".

51. How can the employer expect Grewal to be apolitical and be a proper custodian of its documents when he goes around circulating internal information for his gain? Grewal wanted to use a political figure to have continuity of his employment. He was fully aware that he had performance issues as discussed in the meeting but he ignores that and relies on a selective aspect of the discussion to his advantage. In that process he breaches his contractual term of maintaining confidentiality. If that was not an essential term of the contract, the parties would not have incorporated that in the contract.
52. Grewal also claims that the Vice-Chancellor was aware in 2015 of his communications with the Minister Dr. Mahendra Reddy and Mr. Biman Prasad. The evidence reveals that the Vice-Chancellor was aware that Grewal had some communication with both of them with regard to his probation, but there is no evidence to establish that he was aware that he had sent the Probation Performance Report to Mr. Biman Prasad.
53. Grewal claims that Professor Rajesh Chandra is the one who breached the confidentiality provision by discussing his performance with Dr. Mahendra Reddy. He asserts that if the Vice Chancellor breached the confidentiality then why should he be dismissed for sending the 27 May 2015 meeting minutes to Mr. Biman Prasad?
54. Grewal made reference to text messages between Dr. Mahendra Reddy and Mr. Biman Prasad. I do not find that Professor Rajesh Chandra had breached any confidentiality rule. The whole conflict and scenario was set-up by Grewal. He showed to Mr. Biman Prasad that his friendship with Grewal was causing him agony and that it was at the cost of his job. Mr. Biman Prasad got agitated and raised this matter with the Minister of Education Dr. Mahendra Reddy at a personal level. Dr. Mahendra Reddy of course knew Professor Rajesh Chandra at a personal level and decided to discuss the issue



given his friendship with Professor Rajesh Chandra. When Dr. Mahendra Reddy addressed this issue, Professor Rajesh Chandra had to advise the Minister that Grewal's main issue was his performance that could affect his continuity. Professor Rajesh Chandra had no option left but to inform Dr. Reddy of the truth of the matter. By this time Grewal had already leaked the confidential document to Mr. Biman Prasad. Mr. Biman Prasad knew the contents of the documents well. I do not accept Grewal's contention that Professor Rajesh Chandra was the one who breached the confidentiality provision.

***(b). Procedure for Dismissal***

55. Grewal asserts that none of the procedures outlined in Clause 6 the University's Staff Ordinance (Plaintiff's Exhibit 10) was followed. Clause 6 reads as follows:

***"6. Procedures for Dealing with Gross Misconduct***

- (a) Where the staff member is alleged to be guilty of gross misconduct, the Director of Human Resources must conduct an investigation and gather evidence.*
- (b) The allegations and the evidence supporting the allegations shall be referred to the staff member concerned who shall within two (2) working days respond in writing with an explanation in his/her defence.*
- (c) Upon receiving the written response from the staff concerned, the Executive Director Human Resources after consulting the Vice President Administration shall make recommendations to the Vice-Chancellor and President who shall have the discretion to decide on penalties set out in Clause 11(b) thereof or summarily dismiss the staff member guilty of gross misconduct.*
- (d) In the event that the Vice-Chancellor and President decides to dismiss the staff member for gross misconduct, the Vice-Chancellor and President shall advise the Director of Human Resources to implement his/her decision immediately.*
- (e) The Director of Human Resources shall inform the staff member of the decision by a letter in writing.*

***6.1. Summary Dismissal***

- (a) The University has the right of summary dismissal in the following circumstances:*

- (i) *Where a staff member is guilty of gross misconduct;*
- (ii) *For willful disobedience to lawful orders given by the employer;*
- (iii) *For lack of skill or qualification, which the staff member expressly or by implication warrants to possess;*
- (iv) *For habitual or substantial neglect of the staff member's duties;*
- (v) *For continual or habitual absence from work without the permission of the University and without other reasonable excuse.*

(b) *The procedure on summary dismissal is as set out for gross misconduct, in Clause 6 hereof."*

56. I do not agree with Grewal that the procedure was not followed. An investigation was carried out, Grewal was asked to respond, and given the investigation report and after considering Grewal's response the employer was of the view that Grewal had been guilty of gross misconduct which is defined in the same ordinance.

57. This was a case of summary dismissal and immediate dismissal was warranted. However, the University followed all the procedures outlined in Clause 6 of the Staff Ordinance. In this case the Director Human Resources could not conduct the investigation because Grewal was in charge of Human Resources. I cannot expect that a person junior to Grewal could carry out an effective investigation. It is for this reason that the Vice Chancellor Professor Chandra had delegated the powers to a senior person to carry out the task. Vice Chancellor Professor Rajesh Chandra also did not wish to deal with the allegation as he was the person raising the complaint.

58. Grewal says that the Director Human Resources should have carried out the investigation. Grewal's contract notes his key responsibilities which includes being responsible for Human Resources section too. It would be improper to allow a Director of the Human Resources to investigate him.

59. I find that the essence of clause 6 is to conduct an investigation and allow the worker the right to the information and the right to respond to the allegations. That procedure was followed and Grewal cannot complain of non-compliance. There was no denial of natural justice as outlined by the University's Staff Ordinance. For completeness it is

important that I outline the provision of the contract of employment which indicates that the worker was also in-charge of overseeing human resources department based on which it was sound to appoint someone else to investigate Grewal.

***“Key Responsibilities***

*You will be accountable directly to the Vice-Chancellor and President for the performance of your duties. Your overriding responsibility in the position will be to assist in the implementation of the Strategic Plan 2013-2018 and in particular to transform the quality of the Administration systems and services. You will have primary responsibility for the successful implementation of Strategic Plan Priority Areas 4 and 6, specifically for Objectives 13-16 and 22-24. In addition you will have primary responsibility for Objectives 26 and 30. Detailed requirements of your role and the key performance indicators are found in the Position Description (Attachment B). The key performance indicators will be the basis for annual evaluation to determine the level of performance you attain in your role and will be the basis for the consideration of any remuneration increase or bonus.*

*Your role as an executive member of the University Senior Management Team (SMT) involves your strategic planning and objectives implementation for USP's accreditation plan, information technology and human resources and executive oversight of Planning and Quality, ITS/ICT, Library, Commercial Operations and Human Resources Section plans. The portfolio may be adjusted or areas temporarily delegated by the Vice-Chancellor and President as operationally needed based on organizational changes and priorities. As Vice-President, you are responsible for exercising executive leadership authority delegated by the Vice-Chancellor and President in the administration and management of personnel, financial resources and assets in your portfolio”.*

***Underlining is Mine***

60. I would now turn to other requirements of the law that the employer needs to follow when carrying out the summary dismissal. The law by s. 34 of the Employment Relations Act requires that in cases of summary dismissal, the worker be paid his up to date wages on dismissal:

*“34. If a worker is summarily dismissed for lawful cause, the worker must be paid on dismissal the wages due up to the time of the worker's dismissal.”*

61. The worker was dismissed on 13 June 2016. His up to date salary was paid on 22 September 2016. There was delay in payment of the salary as it did not get paid to the worker at the time of the dismissal as required by law. However, the delay could not be laid at the employer's door to say that the employer breached this provision of the law.
62. This was not a case of simple calculation of unpaid wages at the time of the dismissal. The worker owed some money to the employer in terms of use of the mobile phone and visa card usage. He also had to have his rent deducted from the salary. The worker continued to stay in the University's premises for more than two months post dismissal. At the time of the dismissal, the University did not know how long Grewal was going to stay in the premises for it to calculate the rent. The University had written to Grewal's lawyers on 15 June 2016 asking him to vacate the premises in 1 months' time (Defendant's Exhibit 18). The counsel for Grewal wrote back and asked for time until 15 September 2016 to stay in the premises (Defendant's Exhibit 19). Given the complications facing the parties, it was not practical to get an updated list of the debt owed by the worker for the employer to comply with s. 34 of the Employment Relations Act and thus the delay in payment of up to date wages to the worker.
63. Grewal says that the University should have paid him the monies on time and that he would have settled the debt later. This was not practical for the University given that the worker was an expatriate and there was always a danger that the debt owed to the University may not be recovered. The worker could leave anytime and it would be difficult for the University to recover the debt through litigation even. That is why the parties had agreed in the contract that the worker's debts will be deducted from his final pay. The relevant portion of the employment contract reads:

*"Any monies owing to the University by a member of staff at the date of termination of his employment or on the date of his final departure from the University may be deducted from any unpaid salary or allowance which are then due to the staff member."*

64. I find that Grewal should shoulder the responsibility for precluding the employer from complying with s. 34 of the ERA. He ought to have vacated the premises and allowed the employer an opportunity to know exactly what is to be paid to him on time.
65. I now turn to the issue of payment of benefits under the contract. Section 30(1) of the Employment Relations Act states that all benefits due to the worker should be paid the following working day from his termination. I will identify the benefits that the worker was entitled to be paid. The first is annual leave which was paid in September with his wages. This could not have been paid the next day as the employer could not ascertain the extent of the debt owed to the University. I have discussed this aspect already and do consider it worth repeating.
66. It is not disputed that Grewal was entitled to his superannuation payment. On 24 November 2020, I had by consent ordered that a sum of \$107,038.92 be paid to Mr. P. Knight's trust account within 14 days. Arising out of that order, the parties had agreed that the only remaining issue was whether any interest should be paid to Grewal and the period for which it should be paid.
67. Payment of superannuation is a benefit under the contract and as required by law should have been paid to his superannuation account the following working day. This was not paid because the evidence revealed that Grewal did not have a valid superannuation account. This money could not be given to Grewal in his personal bank account as that was not permitted by the contract of employment. The monies needed to be paid to his approved superannuation account.
68. I will reflect on some of the evidence to indicate that there was no valid superannuation account held by the worker for the payment to be paid in his account pursuant to s. 30 of the Employment Relations Act. I will also reflect on the evidence which indicates that Grewal should shoulder the responsibility for not ensuring that he had a valid superannuation account. Any delay in payment of the superannuation is his making and as such he is not entitled to any interest to be paid to him.

69. Pursuant to the contract, Grewal was entitled to either join the Fiji National Provident Fund as a member or some other duly recognized scheme authorized by the Payroll Unit.

The relevant portion of the contract reads:

*"In regards to the Superannuation a person may choose to join the government scheme provided by USP or a duly recognized scheme authorized by the Payroll Unit. If the contributions are approved for an alternate scheme Payroll ensures the transfer is done at the current exchange rate based on Fiji currency."*

70. I will refer to the relevant evidence of Ms. Shobna Kiran. She was the University's Manager Payroll and her duties included looking after the wages, salaries and benefits issue for the Senior Management Team Staff of the University which included Grewal. It is clear from the unimpeached evidence of Ms. Shobna Kiran that when Grewal joined the University, she asked him whether he wants to join Fiji National Provident Fund. He said that he had a superannuation account in London but did not have the details. He said to Ms. Shobna Kiran that he was going to provide to her the details later.

71. Defendant's Exhibit 35 is a chain of email exchanges between Ms. Shobna Kiran and Grewal's Secretary Mr. Timoci Ravarara. It shows that Ms. Shobna Kiran kept asking Grewal's Secretary for his superannuation account details continuously in August 2014. Then on 22 December 2014 she wrote to Grewal directly and informed him that deductions for his superannuation are being made but she could not forward the payment since he had not provided to the Payroll Unit a nominated superannuation account. Ms. Shobna Kiran had also indicated to him the amounts that had been sitting in the University's Liability Account since August 2014. Grewal took no steps to comply with the request and plea of Ms. Shobna Kiran and the Payroll Unit.

72. The issue was unresolved until his termination and Grewal should take responsibility for that. How is it possible for the Payroll Unit to process his superannuation payment until such time he provided the relevant details to activate his overseas account? There is evidence that Grewal failed to provide to the overseas service providers his relevant

personal details to activate his superannuation account as requested by it. I will refer to the relevant evidence.

73. According to Ms. Shobna Kiran, she was able to meet a person nominated by Grewal to arrange for a source to accept his superannuation payments. The person was Mr. Rick Crocker.

74. Ms. Shobna Kiran was informed that Grewal's fund should be paid to Old Mutual International in London. She then processed the payment for April 2016 to Old Mutual International as evidenced by Defendant's Exhibit 31. The payment was received and a confirmation to that effect was sent by Old Mutual International to Ms. Shobna Kiran by an email of July 18, 2016 after several follow ups by Ms. Shobna Kiran. The purpose of Ms. Kiran's follow up, she testifies, was to ensure that the payment she sent had been processed so that she could forward other payments. I consider this to be proper as she cannot be sending monies to an institute only to realize it is not processed.

75. After indication by Old Mutual International that monies had been received, Grewal wanted to view his account online. Ms. Shobna Kiran then wrote to Mr. Thomas Moffatt of Old Mutual International on 18 July 2016, thanking him for responding and indicating that he had received the monies. She then asked if there was a way that the beneficiary Grewal could view his account online. Ms. Shobna Kiran had copied that email to Grewal as well.

76. On 19 July 2016, Mr. Thomas Moffatt wrote to Ms. Shobna Kiran and copied that email to Grewal his response as follows:

*"Dear Shobna,*

*Unfortunately not as we have not yet received the application form and supporting documents from the FA. Once we have received these we can begin to process the business."*

77. Ms. Shobna Kiran's evidence was clear that when she met Grewal and Rick Crocker in January 2016, she was told by Grewal that Rick Crocker will be handling all the documents and it was understood that he will do all the paper work and send to Old Mutual International. Since the account number was provided, she sent the payments for processing.
78. I accept that it was Grewal and or his agent who had provided the account number to Ms. Shobna Kiran. How else would she know of it? Once that was done Ms. Shobna Kiran did her part by making the payments to the nominated account. I find that Grewal was to update Old Mutual International with all the relevant information and forms. If Ms. Shobna Kiran had to do that, Grewal would have asked her to do it when he was copied in the email by Thomas Moffatt saying that the forms are being awaited. After that Ms. Shobna Kiran could not send any further funds because the account could not be activated by Old Mutual International due to inaction by Grewal.
79. This saga continued until Grewal was terminated. I find from the evidence that Grewal's funds could not be paid to Old Mutual International until the action of creating an account proper was done by Grewal.
80. It is for these reasons that his superannuation could not be paid when he was terminated. Grewal did not comply with his contract to provide a nominated superannuation account to the employer. He did a half-baked job which led to the University to make one payment to be told that the account is not activated due to incomplete forms and details. Grewal is now saying that the employer had to get FNPF to approve a superannuation account for him. That is not the requirement under the contract. The payroll Unit had to approve the scheme which it did. If it did not approve Old Mutual International, it would not have deposited one month's payment in his nominated account.
81. In practical sense and effect, it is the employee who should fill in all relevant forms and details to create an active account. The details must then be provided to the employer.



82. Had the plaintiff provided the University all the relevant information and details of a properly created account on time, it would have paid Grewal his superannuation on time. The delay in getting the sums paid is solely the responsibility of Grewal and he is therefore, not entitled to any interest on payment of the said monies late.

83. On 13 June 2017 (Defendant's Exhibit 26) the plaintiff's solicitors wrote to the Defendant's solicitors in the following form:

*"13 June 2017*

***Re: Dilawar Grewal v USP & Professor Rajesh Chandra Suva - High Court Action ERCC 12 of 2016***

*Thank you for your letter of 6 June on which we have taken our client's instruction.*

*As far as our client is aware Old Mutual International is not a fund approved by FNPF. Our client has had no contact from Old Mutual International nor has he received any forms from them for him to sign or any account number.*

*If your client has deposited the sum of \$4,373.80 with Old Mutual International, please provide full details of the account to which the funds were sent including the account number so that our client can investigate further.*

*Under his contract of employment, our client was entitled to receive his superannuation which he has not. In the absence of any approved superannuation fund, the total superannuation amount should be deposited in our client's account at ANZ Bank, Suva, details of which your client has.*

*Please ensure that this is done immediately"*

84. Grewal's evidence and instructions to his counsel both indicate his dishonesty. If he did not have any contact with Old Mutual International and he did not know that one of his payments had been deposited to his account, why did he provide the account number to Ms. Kiran and why did he ask her to view his details online. If he did not ask to view the details online, he should have refuted that when Ms. Shobna Kiran asked Old Mutual International about Grewal viewing his account online, which email was copied to him.

85. It is clear from the above letter and various other emails from Grewal that he wanted to be paid the superannuation in his personal account which the University's Payroll Unit did not approve as en-cashing a benefit could, as testified by Ms. Shobna Kiran, attract a different form of tax.
86. Mr. P. Knight says that University's lawyers had by a letter dated 22 October 2018 agreed to pay interest at the rate of 3 percent for 3 years from 2014 to 2016. This letter was without prejudice and does not form the basis of my finding which I have arrived at, independent of the settlement talks.
87. Even in September 2016, Ms. Shobna Kiran had emailed Grewal and asked him for his superannuation details to make the payments. However, after providing a valid account number, Grewal did not want the monies paid in that account but in his personal ANZ account which was not permissible (Defendant's Exhibit 28).
88. The other benefit that Grewal claims he was entitled to on termination of his contract was costs for removal of his personal effects from Fiji. I have gone through the contract of employment and found two provisions relating to shipment of belongings which reads as follows:

**"Passages and Baggages**

*Your "home" is specified as Staten Island, New York, United States for the purpose of return passage.*

*An appointment allowance of up to \$FJ3500 (self and family) is payable to assist towards some of your initial costs while preparing to come to the University and for setting in. Within the limits set out in the policy, the University will contribute towards the costs actually incurred in removing household and personal effects, library and the like for appointees. Here are details: Travel, Removal & Relocation of Staff.*

*Please note that the University does not meet insurance costs for baggage.*

*The University will pay for the passage of you, your spouse and your children, Airfare for you is in business class and for your dependent family members (spouse and children) airfare is in economy class. The same will be provided for you and your dependents' on return passage at the end of your employment."*

**"Passages and Baggages**

*An appointment allowance is payable to assist towards some of your initial costs while preparing to come to the University and for settling in. Here are the details: 5.9.10 Travel, Removal & Relocation of Staff.*

*The University will meet relocation costs for you and your dependent family members which will also include the shipment of your personal effects. In addition, the University provides return passage at the end of your employment to the extent of a return business class airfare for you and economy class for dependent family members. If you resign prior to eighteen months after your start date penalties are applicable as outlined in Policy 5.9.10.*

*If you are required to relocate your work location you will be provided reasonable notice of such an impending relocation and reimbursement of incurred costs."*

89. I cannot find any provision in the contract for payment of shipment of goods back to his home upon termination of contract. Even if there was any agreement, I apply my findings on payment of return air tickets to be the same for payment of shipment costs back to the worker's home. The above provisions do provide for payment of air tickets.
90. For payment of return tickets for Grewal, his wife and his dependent children, I find that this could not have been done the very next day as it would be improper to pay for the air tickets unless the employer knew when it was desirable for the plaintiff and his family to travel. Grewal made no effort to indicate to the employer when he wanted to travel. The evidence reveals that he wanted to stay in the University premises until September. How can then the employer provide this benefit the very next day?
91. The employer had undertaken to pay the amount for the shipment costs and the air tickets and had asked Grewal for his travel details. The details were not provided. Since the parties could not work this issue out amicably, I do not find that employer could be solely held responsible for non-payment of these benefits.
92. The parties ought to have amicably worked out the time for travel and shipment of the belongings. The University of course had no idea what Grewal's plans were. He should have informed the University. Now it is 7 years post termination. It is not proper to

require the employer to pay this benefit now as there is no evidence of what costs were incurred at the time of Grewal's travel and shipment of his belongings. No receipts were produced to evidence the costs incurred.

**B. Unfair Dismissal**

93. I refer to Grewal's claim that he suffered humiliation, loss of dignity and injury to his feelings for being summarily dismissed. There is no evidence of any unwarranted conduct of the employer that caused the worker humiliation, loss of dignity and injury to his feelings for which he should be compensated.

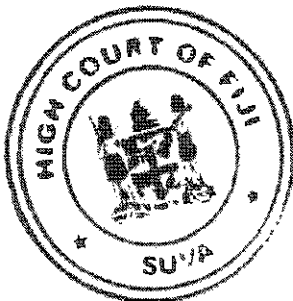
**C. Counter-Claim**

94. There was no evidence that the University had suffered reputational damage as a result of the gross misconduct of the worker. The defendant's evidence did not meet the counter-claim.

95. I also do not find any basis on the evidence before me to grant a restraining order against Grewal either be it for interfering with the University or for publishing any information belonging to the University.

**Final Orders**

96. In the final analysis, I dismiss the plaintiff's claim against the defendant and the defendant's counter-claim against the plaintiff. I order each party to bear their own costs of the proceedings.



*Anjala Wati*

.....  
**Hon. Madam Justice Anjala Wati**

**15. 09. 2023**  
\_\_\_\_\_

To:

1. Messrs Cromptons for the Plaintiff.
2. Sherani & Company for the Defendant.
3. File: Suva ERCC 12 of 2016.