

IN THE EMPLOYMENT RELATIONS COURT
AT SUVA
APPELLATE JURISDICTION

ERCA 18 OF 2019

BETWEEN : **RAVINESH RAVINDRA RAJ**

APPELLANT

AND : **NIRANJANS AUTOPART**

RESPONDENT

BEFORE : **M. Javed Mansoor, J**

COUNSEL : **Ms. S. Nand for the Appellant**

: **Ms. G. Fatima for the Respondent**

Date of Hearing : **02 May 2022**

Date of Judgment : **18 January 2024**

JUDGMENT

*EMPLOYMENT
evidence by the Tribunal*

Appeal – Whether dismissal justifiable – Evaluation of

1. This is an appeal against the determination of the Employment Relations Tribunal made on 16 July 2019, dismissing the appellant's employment grievance. The appellant, who was employed as manager of the respondent's Lautoka branch, commenced employment on 12 January 2015. His employment was terminated on 19 April 2016.
2. The senior resident magistrate stated that the worker admitted having acted in breach of company policies and procedures, and proceeded to consider whether he engaged in gross misconduct. The tribunal held that the appellant's failure to follow company policies amounted to gross misconduct, and concluded that the employer was justified in terminating his employment.
3. The appellant raised three grounds of appeal. These question the tribunal's failure to consider and evaluate evidence, without specifying the items of evidence that have not been considered.
4. At the hearing, the appellant submitted that he filed an employment grievance for unfair termination and unlawful withholding of his wages. The appellant said he was sent on annual leave on 16 March 2016 before his employment was terminated by an undated letter on 19 April 2016. He did not receive notice of termination although his contract required written notice two months prior to dismissal.
5. The appellant submits that he was reporting to the respondent's managing director. After the respondent's chairman appointed his son as the regional manager west, he says he faced conflicts as regards reporting and decision making. The appellant submits that there was a tussle within the executive management of the company. He says this is evident when considering that his termination letter was not signed by the managing director, and that he received a supportive letter from him, which was tendered to the tribunal. The appellant says that the magistrate disregarded evidence on these matters.

6. In reply, the respondent submitted that the grounds of appeal are vague and do not set out the alleged errors made by the tribunal. The respondent says that the appellant's actions warranted termination of employment without notice. The respondent submitted that it has paid all outstanding wages to the appellant.

Evidence before the tribunal

7. The respondent is in the business of selling cars. The allegation against the appellant is that he released a vehicle to a customer without satisfying company procedures. Ratnesh Singh, the respondent's assistant general manager said in his evidence that vehicle sales procedures required approval of a loan by a finance company before it could be released to the buyer and for payment to be immediately banked. The appellant did not immediately bank the customer's cheque, which was subsequently dishonoured. The witness said that by not following these procedures the appellant exposed the company to risk. Referring to other breaches by the appellant, the witness said that he did not carry out a proper stock taking of spare parts. He said the appellant was sent several emails, and meetings were held concerning his performance. The emails sent by the witness were not produced in evidence.
8. The employer sent the appellant a warning letter signed by the financial controller on 18 February 2016, which was copied to the managing director. The letter made references to the release of the vehicle without the finance company's approval and the failure to bank the customer's cheque. The letter says the company wishes to avoid such incidents in the future, and requires him to collect all funds and bank them immediately. The appellant did not reply the warning letter.
9. The appellant was sent on annual leave on 16 March 2016. The letter, signed by the chairman, sending him on leave states:

"This is to confirm you are on annual leave effective from 18 March 2016 for a period of one month as per employment contract.

Please handover office keys and company vehicle also vacate the managers unit as you will be in Nadi. So as to assist with renovations, are plan for the apartment.

If you have any queries please do not hesitate to contact me".

10. On 19 April 2016, the appellant's employment was terminated. In his evidence, the appellant said he communicated with his managing director, Mr. Bob Niranjana. It was the managing director who had offered him employment with the respondent.
11. The managing director's letter dated 13 May 2016, in response to the appellant's email of 16 April 2016, is produced below:

"I refer to the above matter and the email you sent me on 16 April 2016.

As your employer, I was not aware of and did not approve of the annual leave that you took from 18 March 2016 to 18 April 2016.

I understand that you were forced to go on annual leave by our Chairman, Mr N. S. Niranjana under the direct influence of Nirmal (Michael) Niranjana, for which you were not due.

You had informed me that you would be taking your annual leave in August 2016 due to your family commitments.

You had also brought to my attention that you have been treated unprofessionally by Michael over the past three to four months, and Chairman under Michael's influence.

Moreover, that you have experienced constant interference in attempting to run the daily operations in Lautoka Branch, and carrying out the instructions of Head Office Management and myself.

You had informed me that when you attended the branch on Thursday, 14 April 2016 to resolve some pending operational issues on my instructions, you were subject to harassment and intimidation by the security guard, upon Michael's instructions to the management of the provider - Sam's Security Service.

Additionally, your advice of the following matters at our Lautoka branch upon your attendance on the said date is noted as well:

1. Auditors – Neil Chand and Monish Narayan – are performing sales and administrative tasks that has impinged on their ability to conduct their auditing and provide reports for improvements to be implemented.
2. One of our service advisors – Jasmin Bano – is performing sales and administrative tasks instead of preparing quotes, and invoicing repair orders for our service department – resulting in more than 300 unresolved repair orders as at May 2016.

3. All current parts personnel are new/inexperienced and have been stopped from attending our Head Office premises for the purpose of training and development. Senior parts staff have been pressured into resignation due to arguments with Michael, and Chairman under Michael's influence. The parts variance remains unresolved due to the aforementioned issue.
 4. Staff have raised concern that if they attempt to comply with our company policies and procedures, where their instructions are usually in direct conflict with them, Michael, and Chairman under Michael's influence, have advised staff that they will be immediately terminated – and listed the termination of both Kritika Devi, Satya Shiva Reddy, and Rahul Chandra as examples”.
12. The witness, Ratnesh Singh, said he learnt about the letter from the managing director, and was aware that he had a discussion with the appellant. The witness admitted that there was a conflict between the directors, and as a result different instructions were passed to managers. Notwithstanding those differences, he said, company policy on the sale of vehicles did not change. He said that the company's daily operations were managed by the managing director based in Suva. The termination letter was signed by the chairman as he was based in Lautoka, and for that reason it was not issued on a company letter head. The witness said that no financial loss was caused to the respondent as a result of the appellant's failure to follow company procedures. He admitted that although the customer's cheque was dishonored, payment on the concerned sale was settled.
13. The appellant gave evidence and said he was reporting to the managing director, Mr. Bob Niranjana. He said the company chairman wanted him to report to his son, Michael Niranjana, the regional manager west. He said issues concerning his performance arose after the chairman's son joined the company. He was not able to give clear directions to staff and his performance was affected as a result. He said there were conflicts among directors and he faced difficulties when he did not follow Michael Niranjana's instructions, and instead complied with the managing director's directives. The appellant was planning to take annual leave in August to attend his sister's wedding. However, he said, the chairman forced him to go on leave in March 2016, after which his employment was terminated.
14. The appellant was issued a warning letter dated 18 February 2016 before he was sent on annual leave on 16 March 2016. This concerned the release of a vehicle contrary to company policy. He explained the circumstances in which the vehicle

was released without the approval of the finance company from which the customer was getting a facility. He conceded that during that transaction, the customer's cheque had bounced. He said he acted in the best interests of the company as it concerned a reputed customer. The finance company, at which he had previously worked, subsequently approved the facility and made payment within five days. After his annual leave was over, the appellant was told on 19 April 2016 that his services were no longer required and that Michael Niranjana would look after the business. Subsequently, a notice was published alongside his photograph in the Fiji Times of 25 June 2016 stating that he was no longer in the respondent's employ.

15. Once the tribunal considers the evidence and reaches findings on primary facts, a court sitting in appeal will not ordinarily disturb those findings. The tribunal's advantage in hearing the witnesses must not be underestimated. The tribunal has considered the appellant's failure in not following procedures and the risk posed thereby to the company. However, it appears that the tribunal fell short by not considering other evidence having a material impact on the case.
16. This includes the managing director's letter to the appellant after his dismissal. It is true that the letter does not expressly show disagreement with the appellant's dismissal. That must be seen in context. The chairman and the managing director are members of the board, and yet the tone of the letter suggests that dismissal may not have had the managing director's approval. The managing director's disapproval is evident about sending the appellant on leave prior to his dismissal.
17. The warning letter sent to the appellant before he was sent on leave does not suggest any further action was to follow against the appellant. He is warned to recover the monies due. The witness for the company admitted that no financial loss was caused to the respondent. There was no suggestion in the letter of what was to follow when he was sent on leave before dismissal. While each employer may differ in the disciplinary measures that are taken to safeguard business interests, the appellant's dismissal does not seem proportionate to the matters set out in the warning letter and, particularly, in the context of the circumstances shown by the evidence.

18. The appellant had about a year and nine months left in his contract of employment. He was without a job for about 3 ½ months. That loss can be claimed. In this case, the appellant contributed to his grievance by conducting a vehicle sale in a way that was not approved by the company. He was aware of the risks. He says he approved the sale because of the customer's business profile. Considering the circumstances that contributed to the grievance, compensation equivalent to the salary for two months is reasonable.
19. The appellant claimed that there was an outstanding sum due to him from the respondent. Mr. Ratnesh Singh was unable to confirm whether the appellant was paid all his dues. The tribunal has not made a finding on the matter. Therefore, the parties are at liberty to apply to the tribunal to resolve the question concerning the outstanding payment, if necessary.

ORDER

- A. The appeal is allowed.
- B. The respondent is to pay the appellant compensation equivalent to two months' salary.
- C. The respondent is to pay the appellant costs summarily assessed in the sum of \$1,500.00.

Delivered at **Suva** on this 18th day of **January, 2024**.



M. Javed Mansoor

M. Javed Mansoor
Judge