

IN THE EMPLOYMENT RELATIONS COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

ERCC No. 002 of 2023

BETWEEN : **PATRICK VICTOR ADRIAN**
Plaintiff

AND : **TELECOM (FIJI) PTE LIMITED**
Defendant

Counsel : **Mr Karunaratne for the Plaintiff**
Ms Devan for the Defendant

Hearing : **19 August 2024**

Judgment : **29 August 2024**

JUDGMENT

(Dispute under O.34, r.2 of High Court Rules)

- [1] The parties cannot agree on the Facts in Dispute to be included in the Pre-Trial Conference Minutes. They seek a determination from the Court on whether to include three disputes of fact.
- [2] These proceedings involve an employment grievance brought by the Plaintiff against his employer, the Defendant. The material facts as pleaded in the Statement of Claim, as they pertain to the present judgment, are as follows:
- i. The Plaintiff was employed with the Defendant for 34 years. His contract was renewed on 15 October 2021. The Plaintiff was employed as the Manager Supply Chain.

- ii. As a result of a number of frustrations in his employment, the Plaintiff resigned on 23 January 2023 handing over all his employment belongings to the Defendant at the time of his resignation.
- iii. The Defendant did not accept the resignation. The Defendant arranged a meeting between the Plaintiff and the Defendant's Chief Executive Officer on 25 January 2023 to discuss a handover. At the meeting the CEO questioned the Plaintiff about an alleged social media post for which the Defendant believed that the Plaintiff was responsible.
- iv. Separate High Court proceedings were instituted by the Defendant against the Plaintiff on 9 February 2023 in respect to the social media post. At the same time, the Defendant ceased the Plaintiff's access to the internal work systems; it being pleaded at paragraph 12 of the Statement of Claim that the Defendant's actions (requiring him to continue working yet removing his access) were designed by the Defendant to humiliate and embarrass the Plaintiff.
- v. On 1 March 2023, the Defendant wrote to the Plaintiff alleging employment breaches by the Plaintiff and suspending his employment. The Defendant wrote on 9 March 2023 terminating the Plaintiff's employment.
- vi. The Plaintiff pleads a breach of natural justice and procedural fairness with the termination. The grievances identified pertain to a 'forced' resignation, the termination process and the resulting embarrassment and humiliation suffered by the Defendant.
- vii. The Plaintiff seeks compensation for loss of salary and loss of entitlements, interest and costs.

[3] In its Statement of Defence, the Defendant states that it accepted the Plaintiff's resignation, that the previous litigation in the High Court was a result of the Plaintiff's breach of confidentiality (of which an injunction was granted by consent by the High Court) and that its suspension and termination of the Plaintiff's employment were procedurally fair.

- [4] The parties have completed discovery and inspection (although there is a pending Summons for Specific Discovery by the Plaintiff that is yet to be heard and determined).
- [5] There are three disputed facts that the Plaintiff wishes to include in the PTC Minutes, namely:
- i. Whether the Defendant's invitation to the Plaintiff to resume work despite his resignation was to deliberately access the information relating to alleged breach of confidentiality?¹
 - ii. Whether the Defendant's invitation to the Plaintiff to resume work despite his resignation was to terminate the employment of Plaintiff rather than accepting his resignation?²
 - iii. Whether the decision to restrict access was to conceive the Defendant's professional misconduct?³
- [6] The Defendant objects to inclusion of these three matters on the basis that they are not specifically pleaded in the Statement of Claim. The Plaintiff for his part argues that the first two questions emanate from the pleading that the '*Plaintiff handed over all property belonging to the Defendant at the time of resignation*'⁴ and that the '*Defendant did not accept the resignation of the Plaintiff and required the Plaintiff to engage in further handover exercise to a successor*'.⁵ The Plaintiff contends that this matter pertains to the first question in the agreed issues to be determined (as contained in the draft PTC Minutes) which reads, "*Where the referral of the alleged charges to disciplinary panel was done in accordance with the Defendant's Human Resources policy and practice?*".
- [7] With respect to the third factual dispute, the Plaintiff argues that this dispute arises from the claim that '*The Defendant had ceased the Plaintiff's access to internal systems*

¹ 2,12 of the Draft Minutes of the Pre-Trial Conference.

² 2.13 of the Draft Minutes of the Pre-Trial Conference.

³ 2.18 of the Draft Minutes of the Pre-Trial Conference.

⁴ Para 5 of Statement of Claim.

⁵ Para 6 of Statement of Claim.

including email access so that the Plaintiff was unable to attend to any work including any further handover but required the Plaintiff to continue attending work'.⁶

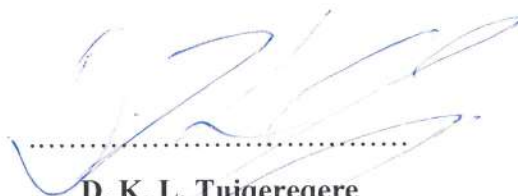
Decision

- [8] Counsel appear to accept that I can decide the issue regarding the content of the PTC Minutes. For my part, I am not sure that a decision is necessary. Clearly parties will not always agree on the content of the PTC Minutes. Where they cannot agree it would be prudent for the parties to simply record this in the Minutes and leave the matter to be determined in the judgment following trial. Where the scope of the issues can be reduced before trial, leading to a material saving in the duration of the trial and reduction of the issues for the Court to determine, it is prudent to deal with such issues ahead of the trial. However, I am not convinced that the three factual disputes will have such an impact.
- [9] Nevertheless, I will decide the issue. Plainly, the three factual disputes are within the factual matrix that make up this case. The key events in this case are the Plaintiffs' resignation in January 2023, the Defendant's refusal to accept the resignation and the suspension/termination in March 2023. With respect to the second event (the Defendant's refusal to accept the resignation), the Plaintiff refers to his meeting with the CEO on 25 January 2023 and his subsequent denial of access to the internal work systems. The three factual disputes pertain to the Defendant's motivations for allegedly refusing to accept the Plaintiff's resignation and its restriction on the Plaintiff's access to the internal work systems. The Plaintiff pleads at paragraphs 12 and 21 that these actions by the Defendant were designed (motivated) to embarrass and humiliate the Plaintiff. If the Plaintiff can prove that the Defendant did refuse to accept his resignation then the Defendant's motivation for its subsequent actions, as per the three disputed facts, will come under scrutiny.
- [10] In summary, while the three disputed facts are not expressly pleaded in the Statement of Claim, they are sufficiently proximate to the pleadings to fall within the scope of the present proceeding. I would add that discovery often turns up additional factual disputes that were not apparent or known to the parties at the time the pleadings were prepared and filed.

⁶ Para 11 of Statement of Claim.

[11] Accordingly, I am satisfied that the three factual disputes at paragraphs 2.12, 2.13 and 2.18 of the Draft Minutes of Pre-Trial Conference can be included.




D. K. L. Tuiqereqere
JUDGE

Solicitors:

Karunaratne Lawyers for the Plaintiff

Neel Shivam Lawyers for the Defendant