

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**EMPLOYMENT JURISDICTION**

ERCC No. 12 of 2017

**BETWEEN** : MAHENDRA PRASAD

**PLAINTIFF**

**AND** : FIJI NATIONAL UNIVERSITY

**DEFENDANT**

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

**COUNSEL** : Mr. D. Nair with Ms. A. Vakaliwaliwa for the Plaintiff

: Mr. K. Kapadia with Ms. P. Devi for the Defendant

**Date of Hearing** : 14 & 15 September 2022

**Date of Judgment** : 26 January 2024

# JUDGMENT

EMPLOYMENT

*Dismissal – Misconduct – Whether dismissal amounts to breach of contract – Damages – Performance bonus entitlement – Humiliation and injury to feelings – Employment grievance*

---

1. The plaintiff filed action stating that he was dismissed from employment in breach of his contract of employment, He was on a renewable contract for three years from 4 January 2014 to 3 January 2017 as general manager of Uni Services of the defendant's Navua farm when he was dismissed.
2. The plaintiff pleaded that he was not given notice of termination and that the balance remuneration and benefits payable under the contract were not paid to him. He says he was not provided reasons in writing for the termination of his employment as required by section 33(2) of the Employment Relations Act and, therefore, the defendant acted in bad faith. The plaintiff said that on 28 March 2005, the defendant placed an advertisement in the Fiji Sun stating that he was not employed from 17 March 2015. As a consequence of negative publicity, the plaintiff said, he was unable to find a suitable job, and suffered anguish and ridicule.
3. The plaintiff pleads that as a result of the defendant's breach, he was deprived of his basic salary and annual leave totaling \$106,305.49 and 10% of FNPF on his base salary from 17 March 2015 to 3 January 2017. He was also deprived of the performance bonus entitlement given in schedule 2 of his employment contract. The plaintiff sought orders for the payment \$106,305.46, for 10% of the total performance bonus entitlement for the years 2015, 2016 & 2017, general damages for breach of agreement, compensation for humiliation, loss of dignity and injury to feelings and for costs on an indemnity basis.
4. In its statement of defence, the defendant denied that it acted in breach of the plaintiff's contract of employment and states that termination was for gross misconduct. The defendant stated that the plaintiff was summarily dismissed in accordance with section 33 of the Act and clause 17.5 of the contract of employment.

5. In his evidence, the plaintiff said that he was sent on leave from 2 February 2015 for three weeks, which was extended until 19 of March, and he was not allowed to resume work. The defendant's security officers had entered his staff quarters at the Navua farm without his permission, and he reported the matter to the Navua police station. He was not allowed to take his belongings out of his premises. The plaintiff denied receiving suspension letter dated 6 March 2015 and the email said to have been sent terminating his employment. He says the defendant blocked his email. The plaintiff says he was unaware of the defendant's letter dated 20 March 2015 to his lawyer, Mr. Iqbal Khan. The letter states that a termination letter was sent to the plaintiff. The plaintiff's position is that he became aware of his dismissal only after seeing the notice placed on Fiji Sun on 28 March 2015.
6. The plaintiff said he filed an employment grievance after seeing a notice in the Fiji Sun stating that his employment was terminated. The grievance was referred to the Employment Relations Tribunal on 3 June 2018. Thereafter, he filed action in the Employment Relations Court. Mr. Prasad said that he was seeking the balance of the contract as well as the bonus computed on 10% of the profits exceeding \$3 million dollars. He said that the employer had indicated to him that his targets were achieved. He sought general damages on the basis that his good reputation was adversely affected. Mr. Prasad said he had no communication with the acting vice chancellor and other senior officers after he was sent on leave as he was denied access to the university and his email was blocked.
7. The plaintiff denied the allegations made against him by the university, and said he could have explained if charges were levelled prior to his dismissal. He denied purchasing equipment without quotations or making purchases in excess of his authority. He said quotations were approved by the director finance. The plaintiff challenged the credibility of the audit manager, Maikali, and said he had concerns about the independence of the audit, but did not ask that the audit be withdrawn. He said that he had no knowledge that there were serious issues concerning the farm that was under audit, and that he has not seen the audit report. The plaintiff said he wrote to minister, Mahendra Reddy, who was previously a member of the

university's board, and informed him that he was not allowed to enter the university.

8. Ms. Pritika Aarishna gave evidence on behalf of the defendant. She is the acting deputy director of human resources of the Fiji National University. The witness says she is the only officer currently in employment and familiar with the case. The plaintiff as general manager was responsible for the defendant's farms, hostels and cafeteria. He was provided accommodation at the defendant's staff quarters at the Navua Farm. She said that schedule 2 of the contract of employment set out the basis of the performance bonus, and that the incentive was available to the general manager as well as to other staff. The general manager was entitled to a performance bonus based on the achievement of specified net profits. The witness said that the table provided in the plaintiff's contract of employment is based on estimates and actual profit figures are available after the release of audited financial statements. The witness says that the plaintiff has failed to achieve profit targets and that, therefore, he was not entitled to a performance bonus.
9. She said the financial statements and audit report issued in 2015 showed a substantial deficit of funds and that these losses were much more than the profits recorded in the cafeteria and the hostels. As a result the net deficit for the whole operation under the plaintiff was substantial and a performance bonus could not be given. The witness said that instead of targeted net profits of \$795,000.00, there was a deficit of \$674,408.00. As a result of these losses, the university leased out the farm from 2016.
10. The witness said that several senior members of the university at that time including the then vice chancellor, Dr. Ganesh Chand, left the university. This was following a decision by the defendant's council to restructure the university. Thereafter, Professor Ian Rause was appointed acting vice chancellor by end of 2014 or early 2015. The witness said that Mr. Narendra Prasad, the director human resources and finance services was dismissed from employment at the time the plaintiff's services were terminated. The farm manager, Mr. J. P Narayan, was also dismissed from employment at the same time in addition to several other key personnel. The witness denied that the plaintiff's email was blocked and claimed

that his email was functioning until 2019. The witness said that the defendant sent the termination of employment letter by email to the plaintiff's gmail address, which was used by the plaintiff to communicate with minister, Mahendra Reddy. She said that the defendant's IT division has confirmed that the plaintiff's email was in order until 2019. At the time the Fiji Sun advertisement was placed, the defendant assumed that the plaintiff had received his termination letter by email.

11. Referring to the Fiji Sun advertisement on 28 March 2015, the witness said it was the practice of the defendant to place a notice in the newspaper if a staff member is dismissed. She said that a notice was also placed on the same day concerning Mr. Narendra Prasad as both employees were terminated on the same day. The advertisement was placed as the plaintiff was involved in purchases and it was necessary to inform the public that he was not acting on behalf of the university.
12. The witness said that in terms of the finance policies at clause 11 of the Uni Services procedure manual it was necessary to obtain at least three quotations when purchases are done. The plaintiff had the power to purchase up to \$10,000.00. It was necessary to have initiated an internal requisition order (IRO). Once this is done and approval is obtained, a purchase order is issued. The witness said that the plaintiff authorised purchases without taking three quotations and in some instances, an IRO was raised after receiving the invoice. In those cases, the IRO was raised after the university obtained the services. She said that there were several instances where goods were purchased, for which payment was not made as IRO's were not raised. She said that while plaintiff was entitled to hold a petty cash float of \$2,000.00, he held a larger float. There were 96 casual workers at the farm as at 26 February 2015, and they were to be paid on a daily basis. Instead, she said, the plaintiff authorised weekly payments for the casual workers.
13. The witness said that the audit was carried out by Mr. Maikali who stated his concerns and recommendations to the acting vice chancellor by his email of 5 March 2015. The letter suspending the plaintiff's employment was issued by the acting vice chancellor on the following day. The witness admitted that the plaintiff's services were terminated before the final audit report was released. She

said a draft of the audit report was available, which has been seen. The witness agreed that the audit report was not given to the plaintiff to explain matters concerning him in the report. She said the termination letter was emailed to the plaintiff as he could not be found on campus. The witness said the defendant wrote to FICAC concerning the plaintiff, which responded saying it would investigate the matters brought to its notice. The witness is not aware whether FICAC completed investigations and reported on the matter. The plaintiff was not cross examined concerning the matters referred to FICAC.

#### **Evaluation of the evidence**

14. The plaintiff's evidence shows he had several grievances. His new contract of employment commenced in January 2014 and his services were terminated by letter dated 17 March 2015, following an audit which took place after he was sent on leave. He did not return to work after being sent on leave. His services were terminated purportedly on the findings of an internal audit report. Unfortunately, the plaintiff was not afforded the opportunity to respond to the matters in the audit report, which, the plaintiff says, he has not seen.
  
15. The plaintiff's action is based on breach of the employment contract. His evidence is that he was not paid his performance bonus in terms of his contract, that his balance salary and annual leave was not paid and of numerous acts of intimidation, harassment and injury to feelings. The plaintiff said that he has not seen the accounts pertaining to the units that came within his management. He asserted that he is entitled to a 10% performance bonus when net profits exceed \$3,000,000.00. He does not mention a specific sum as his dues as performance bonus. Ms. Ram, in her evidence, disagreed that he was entitled to a performance bonus, although his employment contract provides for it. She said that the plaintiff commenced employment in January 2014 and was dismissed in March 2015. Her evidence is that Uni Services suffered losses, and therefore, performance bonus was not payable to the plaintiff. In measuring performance, the performance of the farm as well as the hostel and cafeteria are taken into account. She said that all senior officers of the unit managed by the plaintiff ceased to be in employment, and the farm was closed as a result of not being financially viable.

16. The plaintiff said he has not seen any documents concerning the performance of the farm or the accounts. He admitted he did not write to the university regarding the claims he had. On the evidence before court, the plaintiff has not established that there are amounts due to him as performance bonus.
17. The plaintiff also raised several matters such as intimidation, humiliation and injury to feelings. These matters fall within the definition of an employment grievance under section 4 of the Employment Relations Act. Section 211 (1) (a) confers the Employment Relations Tribunal with jurisdiction to adjudicate on employment grievances. Section 110 (3) of the Act requires employment grievances to be first referred for mediation services. Section 194 (5) of the Act states that if a mediator fails to resolve an employment grievance or an employment dispute, the mediator shall refer the grievance or dispute to the Employment Tribunal. Parliament has mandated mediation procedures and vested the tribunal with features, including those that are found in sections 231 (1), (2) & (3) of the Act, to assist in the effective resolution of or adjudication of grievances. Mediation services, the tribunal and the court have been established to carry out their different powers, functions and duties. The tribunal has power to adjudicate on matters within its jurisdiction relating to claims up to \$40,000.00.
18. The original jurisdiction of this court is set out in sections 220 (1) (h), (k), (l) and (m) of the Act. The Act does not confer on this court the original jurisdiction to hear an employment grievance unless it is transferred under section 218 of the Act. The court will not assume jurisdiction where it is not conferred by law or where jurisdiction can be clearly implied. Initially, the plaintiff stated that the matter was transferred from the tribunal to the court. This did not turn out to be true. Subject to the circumstances given in section 218, the statutory scheme of the Employment Relations Act suggests that an employment grievance must be adjudicated in the tribunal in the first instance.
19. The plaintiff said his employment grievance initially came up on 29 June 2015, and he was present on that day. He received a copy of the termination letter during mediation of his grievance on 1 June 2015. The defendant pointed out that this action was filed on 23 May 2017, two years and 2 months after termination. The

plaintiff explained that the delay was due to financial reasons. Mr. Nair submitted that the case before the tribunal was brought to an end on 24 July 2015 and action was commenced in the High Court as the claim exceeded the tribunal's jurisdiction. Mr. Nair was not able to assist court initially when questioned about the status of the proceeding before the tribunal. Subsequently, counsel submitted the matter was terminated as the plaintiff was seeking a sum in excess of the tribunal's jurisdiction.

20. The defendant's witness said that the certificate of service, which the plaintiff is entitled to, is available with the University. This should have been made available to the plaintiff at the time of his dismissal. The defendant must immediately provide the certificate of service to the plaintiff. Any sum owed by the defendant as unpaid salary or leave pay may be recovered by making an application to the Employment Relations Tribunal, which has jurisdiction to adjudicate the matter under section 211 (1) (d) of the Act.

**ORDER**

- A. The plaintiff's action is dismissed.
- B. The parties will bear their costs.

Delivered at **Suva** on this 26<sup>th</sup> day of **January, 2024**.



M. Javed Mansoor  
Judge