

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

APPELLATE JURISDICTION

ERCA No. 10 of 2022

BETWEEN : RENU CHAND

Appellant

AND : MINISTRY OF WATERWAYS & ENVIRONMENT

Respondent

Counsel : Ms K Maharaj for the Appellant

Ms C Mangru for the Respondent

Hearing : 14 November 2024

Judgment : 10 September 2025

JUDGMENT

[1] Ms Renu Chand, the appellant, appeals from a decision of the Employment Relations Tribunal (**the Tribunal**) dated 9 November 2022. The Tribunal upheld the summary dismissal of the appellant but determined that the respondent had acted unfairly in failing to issue the appellant with a Certificate of Employment on the day of her termination, contrary to s 30(6) of the Employment Relations Act 2007. The Tribunal awarded the appellant compensation of two months wages.

[2] The appellant appeals the decision seeking reinstatement of her employment with the respondent as well as compensation in the amount of \$20,000.

Background

- [3] The appellant was employed with the respondent as the Manager, Human Resources and Administration. She signed a contract of employment on 11 February 2019 for a three-year period up to 10 February 2022 with an annual salary of \$40,553.70. The appellant was required to comply with civil service guidelines, General Orders, Government policies, and departmental instructions. Clause 10 of her employment contract provided:

Dismissal for misconduct or breach of any terms of the contract

The Officer may be summarily dismissed under this contract, if after reasonable inquiries the Permanent Secretary is satisfied that the Officer is guilty of misconduct or a breach under this contract. Upon such dismissal, all rights and privileges accrued to the Officer under this contract will be forfeited with the exception of the rights and privileges established under the General Orders.

- [4] As her position indicates, the appellant's core responsibility was the recruitment and management of staff. As Manager, she was responsible for leading the human resources unit.
- [5] In about November 2019, complaints were made against the appellant with respect to her conduct at work. The allegations being:¹

1. In the month of September, she instructed staff (under her supervision) to spray salt on the desks of staff seated in level 4...

¹ Permanent Secretary's letter of 17 November 2019 to the investigation panel.

2. *It is alleged that she had manipulated recruitment reports after they have been signed both by the Minister and I – to suit the recruitment of personnel that she would like to.*
3. *It is reported that staff under her feel threatened as she seem to use threats to get her way – it is alleged that she tells staff that they will not be confirmed (after their probationary period) if they do not listen to her.*
4. *It is also reported that she may have pursued fraudulent measures during interview processes including the leaking of interview questions to her ‘preferred’ candidate prior to the interview. This was the position of a driver. Fortunately the Ministry came to know of this and has stopped the process.*

[6] The Permanent Secretary appointed a panel of three members to investigate the allegations against the appellant. The three persons were Mr Amit Singh (Director - Policy), Mr Sandeep Singh (Director - Environment) and Mr Mahendra Kumar (Director - Waterways). The appointment letters from the Permanent Secretary dated 17 November 2019 provided:

*I would like you to assist me through sitting on the investigation Panel (which will include you, the other two Directors at the Ministry **and I**) as a member...²*

[7] The panel conducted its investigation on 18 and 19 November 2019. The investigation consisted of meetings with the staff over the two days to obtain information regarding the allegations. Minutes were kept of the meetings. Questions were put by the Permanent Secretary and the panel members to the staff and the appellant. On the first day the staff were interviewed separately. On the second day, the staff were interviewed in the presence of the appellant and there was an open discussion regarding the allegations. The Minutes for 19 November 2019 record, ‘*All accusers with witnesses were called in the Meeting room and PS informed that based*

² My emphasis - it appears that the Permanent Secretary anticipated being part of the panel.

on yesterday's meeting, now discussions will take place in front of Renu [the appellant]'.

[8] On 22 November 2019, the Permanent Secretary wrote to the appellant in respect to the allegations. The allegations were set out and included:

- 1. In the month of September, you instructed staff, (under your supervision) to spray salt on the desks of staff seated in level 4. You made remarks that strongly indicated religious discrimination. You have in our investigation accepted the fact that you called religious worship as 'witchcraft' and negative vibes arising out of a colleague's desk and wrongfully accused him of his religious behaviour to have caused other colleagues to have fallen sick.*
- 2. You have also accepted to the fact that you lied to staff that the Permanent Secretary instructed you to carry out the 'salt spraying'. This was not the case.*
- 3. ...*
- 4. It is also reported that you have leaked interview questions to a candidate prior to the interview. This was for the position of a driver. Fortunately, the Ministry came to know of this and has stopped the process.*
- 5. The above acts would be in breach of the following Civil Service Codes of Conduct (Part 2, Section 6 (1) – (15) – Public Service Act, 1999 – 1.2,3,4,5,6,7,8,9,10,11,12 & 14.*

[9] The letter proceeded to read:

These allegations have been substantiated through the investigation undertaken this week, and are confirmed as being inappropriate for a civil servant, - more so of a Human Resources Manager. You are therefore required to submit a written explanation to the undersigned on or before

25/11/2019 as to why disciplinary action (including dismissal), should not be taken against you.

Pending your explanation and a decision based on the civil service requirements, you are suspended from work with full pay. During the period of suspension, you are not allowed to enter the premises of the Ministry or carry out any transaction on behalf of the Ministry without prior approval from the undersigned.

[10] The appellant responded by letter dated 25 November 2019 denying the allegations.

[11] The three panel members prepared an Investigation Report and signed the same on 28 November 2019. They concluded that on the basis of their investigation, the appellant's behaviour was:

- *...wilful and deliberate that was inconsistent with the continuation of her contract of employment, in that she fraudulently conducted and managed recruitment processes. It was seriously unbecoming of a person who held total and full management responsibilities for the Human Resources (as the HR Manager).*
- *Caused a serious and imminent risk to the harmonious operations of the Ministry inciting disharmony among staff through (religious) derogatory comments.*
- *Amounted to corrupt Human Resources Practices...*

[12] The panel concluded that the allegations were well founded and recommended that the appellant be summarily dismissed

[13] The same day, 28 November 2019, the Permanent Secretary wrote to the Minister for Waterways and Environment recommending summary dismissal of the appellant with immediate effect. The Minister provided approval for this outcome on 29 November 2019.

[14] On 2 December 2019, the Permanent Secretary wrote to the appellant to advise her of the termination of her employment with immediate effect.

The Tribunal proceedings

[15] The appellant lodged a grievance with the Tribunal on 3 December 2019 seeking reinstatement. As mediation was unsuccessful, the matter was referred for adjudication before the Tribunal.

[16] A hearing was conducted on 21 September 2020. The respondent called three witnesses being Mahendra Kumar (one of the panel members), Archana Devi (who worked with the appellant) and Stephen Chand (who had allegedly received interview questions from the appellant). The appellant provided evidence in support of her case.

[17] The Tribunal issued a decision on 9 November 2022. The Tribunal set out the evidence of the respondent's three witnesses. Stephen Chand's evidence was summarised by the Tribunal as follows:

...The witness said that the Grievor [the appellant] was residing in the neighbourhood of his sister and has offered him the job. The witness said that he went to Grievor's house and she gave him handwritten interview questions to study so that he can get the driver's job. The witness said that he had showed the questions to other candidates.

[18] Mr Chand's evidence at the Tribunal hearing is recorded in the transcript.³ Mr Chand stated that in September 2019, the appellant had called him to come to her house and had given him a document with four questions for an interview for the position of driver with the respondent. Mr Chand stated that the appellant told him to hide the questions and keep it to himself. As it was, when he attended the interview, Mr Chand

³ Pgs 320 to 330 of the Record of the Employment Tribunal.

shared the questions with two other candidates. He confirmed that the questions asked at interview were the same as those contained in the document supplied to him by the appellant.

[19] The Tribunal noted in its decision that the respondent relied primarily on two allegations to support its summary dismissal, being the spraying of salt on the desks of fellow staff and the disclosure of interview questions to a candidate. The Grievor's position was that she denied the allegations. The Tribunal found that the allegations were proven, in particular, the leaking of the interview questions. The Tribunal was satisfied that the conduct breached the Fijian Civil Service Discipline Guideline and the '*misconduct was sufficiently serious to justify the penalty of summary dismissal in accordance with section 33 (a) of the Employment Relations Act 2007*'.

[20] Nevertheless, the Tribunal found that the termination was unfair in that the three directors on the Panel were not 'trained' as required under clause 3.3.1 of the Civil Service Disciplinary Guidelines. Also the respondent had failed to issue a Certificate of Employment on the day of termination contrary to s 30(6) of the Employment Relations Act. In light of the breach of s 30(6), the Tribunal awarded compensation of two months' wages in favour of the appellant.

Appeal to the Employment Relations Court

[21] An appeal was filed with the Employment Relations Court on 7 December 2022. Six grounds of appeal were advanced.

[22] The appellant's grounds are summarized as follows:

- i. The alleged conduct by the appellant was not proven by the respondent. Further, the Tribunal failed to have proper regard to the evidence of the appellant. Nevertheless, the alleged conduct of the appellant did not justify a summary dismissal.

ii. There were procedural flaws with the respondent's investigation. This included:

- The three members were not trained.
- It was inappropriate for the Permanent Secretary to be involved in the meetings on 18 and 19 November 2019.
- The conduct of the meeting was unsatisfactory in that the appellant was humiliated by having to be questioned in the presence of her colleagues.

Decision

[23] Section 242 of the Employment Relations Act 2007 (**the ERA**) deals with the conduct of appeals in the Employment Relations Court. The provision provides:

- An appeal must be filed within 28 days from the date of the Tribunal's decision.⁴
- A right of appeal lies from any first instance decision of the Tribunal.⁵
- In hearing and determining the appeal the Employment Relations Court '*has all the power, authority and jurisdiction of the tribunal and such other authority vested in a superior court*'.⁶
- The powers of the Employment Relations Court are prescribed as follows at subsection (7):

When hearing and determining an appeal the court may-

⁴ Subsection (2).

⁵ Subsection (4).

⁶ Subsection (6).

(a) Confirm, modify, or reverse the decision or a part of the decision of the tribunal or set aside the decision of the tribunal and substitute its own decision; or

(b) Refer the matter with or without any direction to the tribunal to reconsider, either generally or in respect of specified matters, the whole or part of the matter to which the appeal relates.

[24] Mansoor J noted in *Tuckers Employees and Staff Union v Goodman Fielder International (Fiji) Limited* [2021] FJHC 261 (4 October 2021), at 15:⁷

An appellate court would be slow to interfere with the factual findings of an original court, unless those findings are plainly wrong or where the court has drawn wrong inferences from primary facts...An appellate court ought not to reverse a decision merely because the court is of the view that it would have exercised the original discretion in a different way...

Summary dismissal

[25] The appellant is critical of her termination. She states that the allegations against her were not proven and that even if established did not justify a summary dismissal.

[26] Section 33 of the ERA deals with summary dismissals. An employer is permitted to dismiss a worker without notice where the worker is guilty of gross misconduct. Pursuant to subsection (2), the employer must:

... provide the worker with reasons, in writing, for the summary dismissal at the time he or she is dismissed.

[27] In *FNU v Ram* [2015] FJHC 1020 (15 December 2015), Wati J stated:

⁷ Footnotes not included.

52. *Under s. 33 of the ERP, there is no requirement of hearing from the employee. If on the investigation conducted by the employer, it is convinced that there is a reason for summary termination, it can proceed to terminate the employee without notice.*
53. *If the employee feels that the cause is unjustified then the employee can file an action for unlawful dismissal and the tribunal or the court will then make a finding of whether the cause is established.*
54. *The procedure that the employee is entitled to under the law is that he or she be provided with written reasons for dismissal and up-to date pay: s. 33(2) and s. 34. There was uncontradicted evidence that this procedure was complied with.*

[28] In addition, under clause 10 of the employment contract, the respondent was permitted to summarily dismiss the appellant ‘*if after reasonable inquiries the Permanent Secretary is satisfied that the Officer is guilty of misconduct or a breach under this contract*’.

[29] It is evident that the Tribunal was satisfied that a summary dismissal was justified on the basis of the leaking of the questions to Mr. Chand. I agree. If the evidence from Mr Chand was correct then the integrity of the recruitment process was undermined by the appellant’s deliberate disclosure of the interview questions to a candidate. Mr Chand stated that the appellant had provided the questions to him and suggested he apply for the position of driver. Unquestionably such conduct met the threshold of **gross misconduct** justifying summary dismissal. The conduct undermined the recruitment process conferring an unfair advantage on Mr Chand who had an opportunity to consider his answers to the questions before the interview. The appellant’s behaviour was particularly egregious in light of her position as head of Human Resources. The Civil Service Code of Conduct reinforces the standard of behaviour required; ‘*an employee must behave honestly and with integrity*’, ‘*must not make improper use of official information...or seek to gain, a benefit or*

advantage...for anyone, and *'at all times behave in a way that upholds the Civil Service Values and the integrity and good reputation of the civil service'*. Providing Mr Chand with the questions for the interview undermined the reputation of the civil service.

[30] The only genuine issue is whether the Tribunal was permitted to accept Mr Chand's version of the events. The appellant denied the allegations. As such, the Tribunal was required to decide whether he accepted Mr Chand's account or the appellants.

[31] The Tribunal set out parts of Mr Chand's evidence in its decision. The Tribunal also referred to the appellant's denial and her version. The Tribunal preferred Mr Chand's version. The Tribunal had the benefit of observing the evidence and demeanour of the two witnesses and was well placed to make the finding. The Tribunal did not, however, explain why it preferred Mr Chand's evidence. It would have been helpful for the Tribunal to have done so. Nevertheless, there was more than ample evidence available for the Tribunal to accept the veracity of Mr Chand's account. Firstly, Mr Chand had no interest in the matter. Secondly, his evidence was supported by evidence from the two persons with whom he shared the questions. The respondent relied at the Tribunal hearing on two signed written statements from Ajay Narayan⁸ and Ravindra Deo⁹ who attended interviews for the position of driver. Mr Chand shared the questions with these two candidates and Mr Deo took a photograph of the questions. The photograph was also produced in evidence at the Tribunal hearing.¹⁰ The Tribunal was entitled to admit this evidence. Section 231 of the ERA permits the Tribunal to admit evidence as it thinks fit and is not bound by the strict rules of evidence. While the documentary evidence carries less weight in the absence of the deponents giving sworn evidence and being available for cross-examination, the Tribunal was nevertheless entitled to place some weight on the written statements and the photograph. Thirdly, the appellant accepted in her evidence that she had encouraged Mr Chand to attend the interview and that it was her handwriting on the photograph.¹¹

⁸ Pgs 65-66 of the Record of the ER Tribunal.

⁹ Pg 67 of the Record of the ER Tribunal.

¹⁰ Pg 61 of the Record of the ER Tribunal.

¹¹ Pgs 336 and 337 of the Record of the ER Tribunal.

Procedural unfairness

- [32] The appellant takes issue with multiple aspects of the procedure employed by the Permanent Secretary that resulted in her termination. This included the appointment of panel members that were not ‘trained’, the participation of the Permanent Secretary in the investigation by the panel, and the conduct of the investigation on 19 November 2019 which involved the appellant being subjected to allegations and questioning in the presence of her colleagues.
- [33] The 2017 Discipline Guidelines were prepared for the civil service in order to promote and support good employment practices. ‘Natural justice’ is identified therein as a guiding principle. A disciplinary process is prescribed under clause 6 for permanent secretaries to follow. It involves notifying an employee of an investigation, the appointment of a panel to conduct the investigation and so forth. Clause 6.2 provides that a permanent secretary must appoint an investigation panel of at least three ‘trained’ members. The panel is required to have ‘gender balance’. The panel is to investigate the allegations, interview relevant people and the employee concerned, and then prepare a report with a recommendation to the permanent secretary to consider.
- [34] It does not appear there is any dispute that the three members appointed by the Permanent Secretary in the present case were not trained. That was the finding of the Tribunal. I would go further. The Permanent Secretary also failed to provide the requisite ‘gender balance’. All members were male while the employee concerned (being the appellant) is a female. Further the questioning of the appellant in front of the other staff on 19 November was inappropriate. It lacked sensitivity and confidentiality and reflected the fact that the three panel members were not trained.
- [35] As for the participation of the Permanent Secretary in the investigation and questioning of staff and the appellant, while the Discipline Guideline does not preclude this, in my view his involvement was contrary to the intention and spirit of the guidelines. The purpose of appointing a panel is to arrange an independent investigation of the allegations separate from the decision maker, being the permanent

secretary. As such, the Permanent Secretary's involvement in the investigation was inappropriate and, thus, unfair.

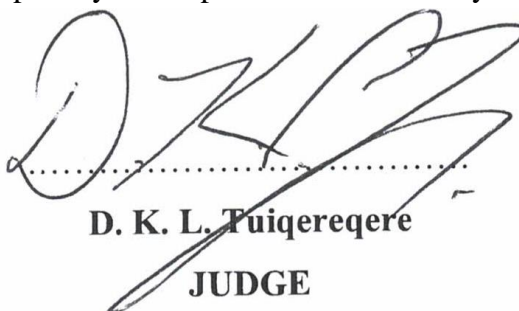
Conclusion

[36] While the summary dismissal of the appellant was appropriate, the process employed by the respondent was unfair. The appellant is entitled to an uplift in compensation for the unfair termination to six months wages.

[37] Accordingly, my orders are as follows:

- i. The appeal is allowed in part.
- ii. The Tribunal's decision confirming the summary dismissal of the appellant is upheld.
- iii. The Tribunal's decision to award compensation of two months for unfair termination is set aside and substituted with an order of compensation of six months wages. This payment is to be made by the respondent within 30 days.
- iv. The appellant is entitled to costs summarily assessed in the amount of \$2,000 to be paid by the respondent within 30 days.




D. K. L. Tuiqereqere
JUDGE

Solicitors:

Capital Legal for the appellant

Office of the Attorney-General for the respondent