

IN THE ARBITRATION COURT
AT SUVA

Action No. ARB 13 of 2016

BETWEEN: Vidya Sagar

Applicant/Worker

AND: Fiji Electricity Authority

Respondent/Employer

Coram:

Hon. Justice Mr. C.S.C.A Lakshman (**Chair**)

Mr. Attar Singh (**Worker Panel Member**)

Mr. Noel Tofinga (**Employer Panel Member**)

Date of Hearing: 3rd April and 11th April 2025.

Representation:

Applicant/Worker: In Person

Respondent/Employer: Mr. N. Lajendra (Lajendra Lawyers)

Decision

A. Introduction

[1] This matter deals with an application by Mr. Sagar under Section 191 BTB of the Employment Relations Act 2007 for compensation for termination of employment.

B. Background

[2] On 31st July 2012, Mr. Vidya Sagar, was an employee of Fiji Electricity Authority (now referred to as EFL – Energy Fiji Limited). He was part of a team with 17 others assigned to carry out maintenance work on the power lines near Serua Island.

[3] Vidya Sagar was the permit holder. The Team Leader was Sunia Dauniwaqalevu. One of the task for the teams involved fixing a leaning pole (6th pole) which was located between the main land and Serua Island.

[4] Sunil Sharma was asked by Sunia Dauniwaqalevu to use a crane (FK907) and fix the pole. Sunil Sharma did not fix the pole as he found that the crane he was using was too heavy and could get bogged down. Sunil Sharma informed Sunia Dauniwaqalevu of the same. According to Sunia Dauniwaqalevu he informed Sunil Sharma to inform Vidya

Sagar to fix the leaning pole manually using chain hoist and anchor screw. Vidya Sagar disputes these instructions. According to him he had no idea what transpired between Sunil Sharma and Sunia Dauniwaqalevu. According to Vidya Sagar, Sunil Sharma requested him to take the lighter vehicle to do the work.

- [5] Vidya Sagar took a lighter truck (FJ 800) to fix the leaning pole. As he reversed the truck closer to the pole, the truck got bogged down. Sunia Dauniwaqalevu requested Sunil Sharma to pull out FJ800 using FK907. Sunil Sharma refused. Sunia Dauniwaqalevu tried to use tip truck (EQ506) to pull FJ800. EQ 506 also got bogged down. With the help of the villagers EQ506 was removed. FJ 800 could not be retrieved before the tide came in. It was submerged. FJ 800 was removed the next day by a crane.
- [6] Internal investigations were carried out. Vidya Sagar was charged with “*careless driving of FEA Hino truck FJ 800, which ended up submerged in the sea overnight and the truck sustained extensive damages as a result.*” After deliberations, Vidya Sagar was suspended without pay for 28 days pending termination in accordance with clause 15.4 of the collective agreement between FEA and FEA Workers association (FEWA). The suspension without pay was effective from 27th February 2013.
- [7] The FEA Management decision was appealed by Vidya Sagar. The appeal was heard by the CEO, Mr. Hasmukh Patel. The appeal was refused. Vidya Sagar was informed by FEA that his employment will cease on 27th March 2013.
- [8] This matter was first called on 23rd September 2016 before the then Chair, Hon Justice Liyanage. The matter was not dealt with when Justice Liyanage resigned sometimes in 2023. Justice Lakshman was appointed Chair of the Arbitration Court with effect from 9th January 2025. On 10th March 2025 the matter was set for hearing.

C. The Law

- [9] **Section 191 BTB** of the Employment Relations Act 2007 provides that:

“(1) *Subject to subsection (2), any worker who—*

- (a) was employed in an essential national industry under the Decree or with a designated corporation or a designated company under the Decree; and*
- (b) whose employment was terminated by the employer during the operation of the Decree,*

may make an application to the Arbitration Court for compensation, provided however that any such application must be made to the Arbitration Court within 28 days from the date of the commencement of this section.

(2) No application for compensation shall be made by any worker for the termination of employment—

- (a) on the basis of established, proven or admitted corruption, abuse of office, fraud or theft; or*
- (b) whereby the facts and situation which led to the termination has resulted in the worker being convicted of an offence.*

(3) In the determination for compensation made under this section, the jurisdiction of the Arbitration Court shall be limited to only an award of compensation not exceeding \$25,000.00.

(4) Subject to subsection (3), in the determination of any application made under this section, the Arbitration Court shall have such powers and be subject to such procedures as prescribed under sections 191AY and 191AZ.”

- [10] The procedures and the particular powers of the Arbitration Court are set out in sections 191AY and 191AZ of the Employment Relations Act 2007.
- [11] The procedures of the Arbitration Court set out in Section 191AY of the Employment Relations Act 2007 is of relevance. The procedures at the hearing and determination of a trade dispute or **any other proceedings** before the Arbitration Court is:
- (a) subject to subject Part 19 – Essential Services and Industries of the Employment Relations Act 2007 and the discretion of the Arbitration Court;
 - (b) not bound to be formal and shall not be bound by the rules of evidence but may inform itself on any matter in such manner as it thinks just; and
 - (c) to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.
- [12] The Arbitration Court has the power to determine the time periods for the fair and adequate presentation of the respective cases of the parties: (Section 191AY (2)). It can also require evidence or arguments to be presented in writing and may decide the matters on which it will hear oral evidence or arguments: (Section 191AY (3)).
- [13] Section 191BTB (4) (a) to (h) of the Employment Relations Act 2007 provides for the Arbitration Court powers and it provides that the Court:
- (a) take evidence on oath or affirmation;
 - (b) summon parties, witnesses and compel the production before it of books, papers, documents and things;
 - (c) hear and determine the matter in the absence of a party who has been summoned or served with notice to appear;
 - (d) conduct its proceedings or any part of its proceedings in private;
 - (e) refer a matter an expert and accept his or her report as evidence;
 - (f) direct parties to be joined or struck out;
 - (g) dismiss the matter or part thereof if it appears that it is trivial or that further proceedings are not necessary or desirable in the public interest; and
 - (h) give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of the matter.

D. Determination

- [14] Vidya Sagar is challenging the decision of EFL to terminate his employment. He is not challenging the process. He made this clear at the hearing. Mr. Sagar gave evidence. He also called Chandar Pal. Jitendra Vishwa Kumar and Sunia Dauniwaqalevu were called to give evidence by EFL.

- [15] Vidya Sagar's termination is not based on the basis of established, proven or admitted corruption, abuse of office, fraud or theft; or him being convicted of an offence. Vidya Sagar's termination is based on the charge of "*careless driving of FEA hino truck FJ 800, which ended up submerged in the sea overnight and the truck sustained extensive damages as a result*". His termination was following an internal investigation and enquiry and the management concluding that Vidya Sagar:
- a.) ... ignored the team leader's instructions not to take FJ 800 to the leaning pole site and instead drove the truck to the site which led to it being submerged in sea water over night and subsequently had to be written off;
 - b.) ...failed to carry out a thorough jobsite safety assessment prior to driving the vehicle to the site closer to the sea. Had he carried out a thorough safety assessment of the site, he would have realized that the area that he had planned to take the vehicle to had un-compacted sand;
 - c.) ... deliberately reversed the truck off from the recognized vehicle crossing route to Serua Island without confirming the integrity of the seabed onto which he was reversing on;
 - d.) ... was aware that Sunil Sharma could not use the FEA cranes FK906 to straighten the pole due to the high risk of bogging the crane into the sand, thus his team was sent to manually straighten the pole; and
 - e.) ... failed in his duty as a driver to immediately notify the fleet officer when the incident happened as clearly specified and required of him pursuant to the FEA Fleet Policy Manual."
- [16] We will analyze each of EFL's ground for termination of Vidya Sagar. The first being that he ignored Sunia Dauniwaqalevu's instructions not to take FJ 800 to the leaning pole site and instead drove the truck to the site which led to it being submerged in sea water.
- [17] It is evident from the information before this court that Vidya Sagar was not personally directed by Sunia Dauniwaqalevu not to take FJ 800 to the leaning pole. According to Sunia his instruction to Sunil was to inform Vidya to straighten the pole manually. The information Vidya got was to take the lighter vehicle across to straighten the pole.
- [18] The information that the EFL management relied were in the form of reports. One of which was the "*Serua Incident Report FJ800 Hino Truck 31/07/12*". This report was by Aktar Ali (HSE Advisor Central). Part of the sequence of events noted in the Report are that "*•Sunil drove the crane and tried to approach the area close to the leaning pole. He felt the area was soft and could bog the crane. •Sunia drove to the island using the tip truck and returned to pick something from the main land. • While Sunia was returning back to the island, Sunil met Sunia in between the main land and the island and advised Sunia that it was not safe for the crane to straighten the pole. There was some risk of the crane getting bogged in soft sand. •Sunia advised Sunil to request Vidya to get the*

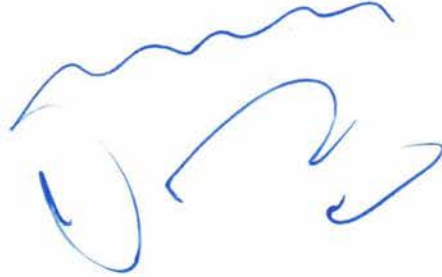
Anchor screw and chain hoist with his team and straighten the pole. •Sunil returned to main land and advised Vidya to take the lighter vehicle across to have the leaning pole and try and straighten the pole using anchor screw.”

- [19] The other notation in the report is that “*•Vidya felt that this could have been the conversation between Sunil and Sunia and obliged to attend to the pole alignment as per Sunil’s discussion... •Vidya stated in his statement that he was not aware what transpired between Sunia and Sunil but followed his instructions thinking that Sunia could have requested him to take the lighter vehicle to straighten the pole. • According to Sunia, he stated that he never requested Vidya to drive his vehicle to the leaning pole and straighten the pole. He only asked them manually straighten the pole using anchor screw and chain hoist.*”
- [20] We note that the *Serua Incident Report FJ800 Hino Truck 31/07/12* does not contain written statement of Sunil Sharma. Sunil’s statement is important as he was the mode of communication between Sunil and Vidya. We requested for a copy of this from EFL and we were not provided one. We are not in a position ascertain what was in Sunil’s statement. What is clear to us is that Vidya did not directly get instructions from Sunia. The instructions were through another person. The *Serua Incident Report FJ800 Hino Truck 31/07/12*, which is an internal EFL Report cites that *Sunil returned to main land and advised Vidya to take the lighter vehicle across to have the leaning pole and try and straighten the pole using anchor screw.* That is what Vidya actually did.
- [21] The information that Vidya received according to the report was what he did. He was told to take a lighter vehicle across to fix the pole. He cannot be faulted later if the information was incorrectly transmitted to him. He took the lighter vehicle to fix the pole.
- [22] The second and third grounds are that *Vidya failed to carry out a thorough jobsite safety assessment prior to driving the vehicle to the site closer to the sea. Had he carried out a thorough safety assessment of the site, he would have realized that the area that he had planned to take the vehicle to had un-compacted sand and that he deliberately reversed the truck off from the recognized vehicle crossing route to Serua Island without confirming the integrity of the seabed onto which he was reversing on.*
- [23] Vidya took the truck on the designated path. The truck got bogged near the pole. He did not check compaction on the track. He did not walk on the sand. The track was a marked area where he drove on. It was when he reversed near the pole that it got bogged. Vidya was the driver of the truck he was in control of it. He reversed the vehicle near the pole. We accept he could have stepped out and checked before reversing near the pole. However, it would not fair to say that he deliberately reversed the truck so as to bog it in the sand.
- [24] The fourth ground was that *Vidya was aware that Sunil Sharma could not use the FEA crane FK906 to straighten the pole due to the high risk of bogging the crane into the sand, thus his team was sent to manually straighten the pole.* The information before us is that Vidya was aware that Sunil took the crane near the pole and when Sunil assessed that

the crane would bog down he returned. Vidya had also seen Sunil come back with the crane. The information before us is that Vidya was advised to take his truck, which was lighter than FK906 to manually straighten the pole. This is what Vidya did. Vidya cannot be faulted for relying on the information which was provided to him. The information being that he take the lighter truck to fix the pole manually.

- [25] The fifth ground was that Vidya *failed in his duty as a driver to immediately notify the fleet officer when the incident happened as clearly specified and required of him pursuant to the FEA Fleet Policy Manual*. The incident happened on 31st July 2012. According to Vidya Sagar, he had not seen the Fleet Management Manual and Policies. The Manual and Policies show that it was amended on 26th July 2012. The preface of the Manual and Policies has CEO's name and is unsigned. It is dated October 2012. We accept Vidya Sagar's evidence that he had no knowledge of the Manual and Policies. The Manual is also after the date of the incident and the unsigned preface is dated October 2012. This is well after the incident.
- [26] We accept Mr. Lajendra's submission that EFL's line of operations are high risk. It is EFL's duty to see that its workers are provided adequate equipment and transportation for their work. EFL knew of the nature of work on Serua Island. The requirements were for 4 x 4 vehicles and diggers. These were part of the plan but not provided at the site. If these were on site the incident would have been averted.
- [27] Putting things into context, Vidya Sagar was sent to battle. The armoury was stocked. Battle commenced. One battalion confronted the enemy. They retreated. Vidya Sagar was asked to take his platoon to battle. He did not hesitate. He gathered his troops and whatever equipment he was provided. He approached the enemy. As he approached the enemy he stepped on a land mine. The firing started. He took a bullet. Some of his comrades stood by and watched things play before their eyes.
- [28] Upon return from battle, Vidya's wounds were not attended to. He was inflicted further injuries. He was terminated. This is Vidya Sagar's story. The employer had proper resources and ammunitions. They were kept at the camp/barracks. Vidya Sagar was blamed for the bog down. He was made the scapegoat. The message to employers is that when they send workers to battle it is their responsibility to equip them appropriately and adequately. They should not blame workers and make them an example to others if they fail in their duties.
- [29] We accept that Vidya Sagar drove the vehicle that got bogged in the sand that was subsequently damaged by sea water. Vidya Sagar was committed to his work. He tried to get to the pole to straighten it. He was not like Sunil Sharma, who sat and looked and despite be asked to use the crane to pull the vehicle out. The next day similar cranes were used to retrieve the vehicle and that too away from the designated tracks. On the information before us we do not find that Vidya Sagar should have been terminated by EFL. This is the unanimous decision of the Court.

[30] In light of our findings, Vidya Sagar is awarded \$25,000.00 as compensation. It is to be paid within 21 days by EFL.



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Hon. Justice Mr. Chaitanya S.C.A Lakshman
Chair – Arbitration Court
For and on behalf of the Members

23rd July 2025

