

**IN THE COURT OF APPEAL, FIJI**  
**[On Appeal from the Employment Relations Court]**

**CIVIL APPEAL NO. ABU 002 OF 2021**  
**[Suva Case Number ERCC 08 of 2016]**

**BETWEEN** : **P A LAL COACHWORK**  
*Appellant*

**AND** : **MOHINI LATA**  
*Respondent*

**Coram** : **Prematilaka, RJA**  
**Morgan, JA**  
**Dobson, JA**

**Counsel** : **Ms. P. Kumar and Mr. A. V. Bale for the Appellant**  
: **Mr. V. Maharaj for the Respondent**

**Date of Hearing** : **06 May 2024**

**Date of Judgment** : **30 May 2024**

**JUDGMENT**

**Prematilaka, RJA**

[1] I have read in draft the judgment of Morgan, JA. I agree with reasons and orders proposed.

**Morgan, JA**

**Introduction**

[2] This is an appeal against the judgment of the Honourable Justice Anjala Wati in the Employment Relations Court at Suva in Case Number ERCC 08 of 2016 wherein the

Judge found that the Respondent had been unlawfully dismissed from her employment with the Appellant and as a consequence made the following orders:-

- a. *The employer to pay to Mohini Lata the following sums within 21 days of the judgment:*
- |  |              |
|--|--------------|
| • <i>Lost wages for 2 ½ years:</i>             | \$45, 760    |
| • <i>FNPF on lost wages:</i>                   | \$4, 576     |
| • <i>2 days wages (14 and 17 August 2015):</i> | \$140.80     |
| • <i>Long Service benefit:</i>                 | \$2,500      |
| <i>TOTAL:</i>                                  | \$52, 976.80 |
- b. *The employer is to also pay to the employee costs in the sum of \$5000 within 21 days.*
- c. *The total sum payable to Mohini Lata including costs is \$57, 976.80.*
- d. *The parties shall be at liberty to apply to the court to correct any calculation errors.*

[3] Being dissatisfied with this Judgment the Appellant filed a Notice of Appeal in this Court for the Judgment to be set aside and for such other relief and costs as this Court considered just. The said notice relied on the following grounds:-

1. That the Learned Judge erred in law in considering the email supposedly dated 26<sup>th</sup> May, 2015 which was marked as exhibit P Ex-2 as evidence for the Respondent for which she was neither the sender nor the intended recipient.
2. That the Learned Judge erred in fact in considering the said email as rejection of termination, as the email was not directed at the Respondent but an enquiry by Victor Lal to Richard Lal.
3. That the Learned Judge erred in law and in fact in stating that procedures followed should be in writing yet considered the said email as evidence for rejection of resignation.
4. That the Learned Judge erred in law and fact in her failure to consider that the Appellant had given the Respondent the right to be heard to discuss face to face the details of the Termination letter and her responses to the same.

5. That the Learned Judge erred in law and in fact in considering irrelevant facts that the employer was required to accept the employee's resignation letter in writing given that the employee had failed to prove that both directors revoked her resignation letter.
6. That the Learned Judge erred by failing to exercise her discretion to consider that the employee's resignation letter was written and received in June, therefore discrediting the employee's evidence that Victor Lal's email reflected that he revoked her resignation.
7. That the Learned Judge erred in law and in fact in failing to consider that the employee's resignation letter would be effective once both directors of the employer company revoked her resignation.
8. That the Learned Judge erred in law and in fact by failing to determine whether the employee's new role as an administrative executive was a demotion or promotion of her previously held position as this would illustrate that if the employee were demoted, in which event the employer had taken reasonable steps to terminate the employee during her notice period.
9. That the Learned Judge erred in law and in fact by making contradictory statements in paragraph [22] of her Judgment dated 27<sup>th</sup> September, 2020 that the termination letter was not required if the employer viewed the employee as gross misconduct and in stating under paragraph [31] that the employer was required to specify the employees actions which amounted to gross misconduct.
10. That the Learned Judge erred in law and fact by making contradictory statements at paragraph [22] of her Judgement dated 27<sup>th</sup> September, 2020 by stating that the employer was not require to issue the employee with a termination letter if she was viewed as gross misconduct which contradicts paragraph [20] where she states that the employer was required to accept the employee's resignation in writing.

11. That the Learned Judge erred in law and in fact in considering the employee's evidence that Victor Lal's email confirmed that the employee's resignation was never effective given that the employee failed to prove that Victor Lal's email was in response to her letter of resignation which the employee failed to prove was written on 26<sup>th</sup> May, 2015.

[4] Both parties filed and relied on written submissions before this Court.

### **Background and Facts**

[5] The background and facts are adequately set out in the Judgment and I reproduce that portion of the Judgment as follows:-

- “1. The claim between the parties arises out of an employment relationship that existed between the parties for 23 years prior to it being terminated by the employer on 9 September 2015.
2. The employee Mohini Lata claims that she was unlawfully and unfairly terminated from her employment. She seeks various remedies. For unlawful termination, her claim is for lost wages for 3 years calculating to \$54,912.00 as she was 52 at the point of termination. She also claims a sum \$7, 425.60 lost as contribution to the Fiji National Provident Fund, a sum of \$2,500 being long service benefit that she would have been entitled to if she had worked for two years and a sum of \$704 being her sick leave unpaid for 14 and 17 August 2015. She also seeks general damages for unfair termination.
3. In form of brief background, Mohini Lata was employed by PA Lal Coachwork since February 1993 as the Company Secretary. PA Lal Coachwork is a subsidiary company of PA Lal Holdings Limited which manufactures buses and coaches.
4. It is Mohini's position that when she worked for the company for 23 years, she only reported to the Managing Director Mr. Richard Lal and the Executive Director Mr. Victor Lal. Victor Lal was based in New

Zealand. She says that she had an excellent working relationship with the employer until one Marissa Lal joined the company.

5. Marissa Lal is the daughter of the Managing Director Richard Lal. Mohini says then since Marissa joined the company in 2015, she took control of the company and made her life very difficult by creating a lot of work for her, causing her tension, shouting at her and taking away from her the role she has had for so long and assigning her new work which she was taking time to learn.
6. Mohini says that as a result of the tension and problem created by Marissa she wrote a letter on 26 May 2015 through which she informed the employer of her intention to resign from the employment with effect from 29 May 2015. She says that the letter which expressed that intention was written on 26 May 2015 but was incorrectly dated 26 June 2015. It is her position that her resignation was not effective as it was rejected by the employer via an email dated 26 May 2015 by Victor Lal and that Richard Lal also asked her to stay back and work. She therefore continued to work for the employer but as administrative executive as per her new job description dated 22 May 2015. She executed the new job description on 29 May 2015. Her weekly wages was \$352. She says that she continued to perform her work as outlined in the job description until she was terminated.
7. The employer's position is that Mohini Lata was a very long time trusted employee and was like the mother of the defendant company. She was only reporting to the directors all these years. When Marissa Lal joined the company in January 2015 as Manager Group Operations, she started streamlining and putting procedures in place for effective management. She started looking after the day to day operations of the Company. Marissa Lal required more transparency and accountability. Mohini Lata then had to report to Marissa and seek permission for certain matters and acts for which she used to have a free reign before. This caused Mohini Lata grief and she got disturbed. As a result she

would not listen to Marissa, show her disrespect and started creating problems and issues for the defendant company.

8. Being unhappy with more accountability and transparency, the employer says, Mohini resigned from the employment on 26 June 2015 with effect from 29 May 2015. After the resignation, the plaintiff worked her notice period with the defendant which was mutually extended for a proper handover.
9. The employer alleges that during the notice period, Mohini Lata was engaged in acts of sabotage, insubordination and abuse of company assets and theft. Notwithstanding those acts, the employer says that the plaintiff was given a right of hearing on various dates and times with management at which time the plaintiff confirmed her resignation with the employer. The employer also maintains that the employee was lawfully and fairly terminated for gross misconduct.”

### **Issues**

[6] The Judge set out the issues she was required to determine as follows:-

- “1. Whether the plaintiff had resigned from employment by a letter dated 26 May 2016 to take effect on 29 May 2016?
2. Whether after the resignation the plaintiff worked the notice period which was mutually extended for a proper handover?
3. Whether the employer agreed to pay the employee a sum of \$352 per week as an administrative executive during the handover period.
4. Whether the plaintiff was unlawfully and/or unfairly terminated from her employment?
5. Whether the plaintiff was engaged in acts of sabotage, insubordination, abuse of company assets and theft during this extended handover period and whether these acts amounted to gross misconduct warranting summary dismissal.

6. Whether the employer afforded the plaintiff a right of hearing on various dates and times with management and whether the plaintiff then confirmed her resignation with the defendant.
7. Whether the employer revisited the plaintiff's job description with the plaintiff at a meeting with management in order to outline the plaintiff's roles and responsibilities and illustrate the plaintiff's shortcomings.
8. If the plaintiff has been unlawfully and/or unfairly dismissed from her employment, what are the proper remedies that ought to be awarded to her? If the plaintiff is granted damages for unlawful and/or unfair damages, should there be any interest payable on the said amount. Should there be any order for costs of the proceedings and what shall be the proper amount to be paid?"

### **Discussion**

- [7] The Appellant's above grounds 1, 2, 3, 5, 6, 7 and 11 all relate to the Respondent's resignation letter and whether or not her resignation was accepted or rejected by an email dated 26/05/2015 from the Executive Director of the Appellant Victor Lal ("the email").
- [8] The Respondent contended that her resignation letter was only an intention to resign effective 26/05/2015 and that her resignation was not effective as it was rejected by the email.
- [9] The Appellant's position in essence was that the Respondent had effectively resigned by her said letter and subsequent action and that the email did not reject her resignation and was in any event hearsay and inadmissible as evidence and should not have been considered by the Judge.
- [10] The email was clearly not hearsay however this issue became moot at the hearing of the appeal as the Appellant conceded that the Respondent had not resigned and that her employment had been terminated and that the only issue was whether her termination was lawful.
- [11] This being the case it is not necessary to consider the Appellants Grounds of Appeal numbers 1, 2, 3, 5, 6, 7 and 11.

- [12] The only grounds which refer to the termination and its justification or otherwise are grounds 4, 8, 9 and 10 which all refer to the central issue of whether the Respondent's termination was lawful.
- [13] The Appellant by letter to the Respondent dated 17 August 2015 informed the Respondent that they considered that there had been difficulties in relation to a new role the Respondent had been given with the Appellant.
- [14] Generally they were concerned with her conduct towards staff members and her aggressive attitude. Particularly the Appellant was concerned with the Respondent's conduct at a meeting with representatives of the Appellant on the 13 August 2015 when it was alleged that the Respondent "threw a mobile phone and stock cards in relation to material postings." It was also alleged that the Respondent had refused to report to the Executive Team of the Appellant company and to undertake tasks delegated to her in direct contravention of her role with the Appellant Company. Lastly the letter noted "your aggressive and intimidating conduct in relation to communication with Executive Team Members threatening action."
- [15] The Appellant proposed a meeting on the 18<sup>th</sup> August 2015 to discuss these issues. Evidence was given as to what transpired at the meeting however that evidence was disputed and was not conclusive. There were no minutes of the meeting.
- [16] At the meeting the Respondent was encouraged to take leave and while on leave she attended another meeting with a representative of the Appellant where she was offered redundancy which she refused to accept.
- [17] While still on leave on the 9<sup>th</sup> September 2015 a termination letter was delivered to the Respondent. The termination letter stated:-

*"I am writing to you in regards to the summary dismissal of your employment with PA Lal Holdings with immediate effect pursuant to clause 7.0 of your contract of employment.*

*Our decision is based on your failure to adhere to policies set out by the company and we consider that your actions constitute serious misconduct warranting summary dismissal in accordance with the Employment*



*Relations Promulgation 2007 (Promulgation No. 26 of 2007) Part 5, Point 33 –(1) –(a) where a worker is guilty of gross misconduct.*

*You will be paid any accrued entitlements and outstanding remuneration less any money due to the company in accordance with the law, up to and including the last date that you were present at work.*

*You are required to hand over all company assets, contracts, documentation, files, customer details, keys and any other company property prior to your departure.”*

[18] Employment Law in Fiji recognises the underlying principle that employment relations must be conducted fairly.

[19] Section 201(1) of the Fiji Constitution provides:-

*That every person has the right to fair employment practices.*

[20] The introduction to the Employment Relations Act 2007 states that it is:-

*“An act to provide a statutory framework which promotes the welfare and prosperity of all Fiji’s peoples by:-*

*“(A) creating minimum labour standards that are fair to workers and employees alike...”*

[21] Further as highlighted by the Respondent in her written submissions before this Court an International Convention to which Fiji is a signatory pertaining to labour practice namely Articles 4 and 7 of the ILO Convention No. 158 of 1982 requires employers to have valid and fair reasons for terminating an employee.

[22] Also the Respondent in her written submissions before this Court submitted the following:-

*“1.4 The principles of fairness was discussed and adopted in the case of Central Manufacturing Company Limited v. Yashni Kant [Unreported Fiji Supreme Court Case Number CBV 0010 of 2002] (copy enclosed) which clearly states that in carrying out the dismissal, the employer must treat the employee fairly and with appropriate respect and dignity. The relevant excerpt reads as follows:-*

*“In our view, the Court of Appeal correctly held that there is an implied term in the modern contract of employment that required an employer to deal fairly with an employee, even in the context of dismissal. The content of that duty plainly does not extend to a requirement that reasons be given, or that a hearing be afforded at least where the employer has the right to dismiss without cause, and to make a payment in lieu of notice. It does extend, however, to treating the employee fairly, and with appropriate respect and dignity, carrying out the dismissal.”*

[23] Against this backdrop Section 33 of the Employment Relations Act 2007 states:-

*33 (1) No employer may dismiss a worker without notice except in the following circumstances-*

- (a) where a worker is guilty of gross misconduct;*
- (b) for wilful disobedience to lawful orders given by the employer;*
- (c) for lack of skill or qualification which the worker expressly or by implication warrants to possess;*
- (d) for habitual or substantial neglect of the worker’s duties; or*
- (e) for continual or habitual absence from work without the permission of the employer and without other reasonable excuse.*

*(2) The employer must, provide the worker with reasons, in writing, for the summary dismissal at the time he or she is dismissed.*

[24] The obvious rationale behind the statutory requirement to provide reasons is to give an employee clear notice of the incidents of gross misconduct relied on so that the employee can properly answer and defend the same. This rationale recognises the principle and requirement that employment practices in Fiji must be conducted fairly as set out in paragraphs [18] to [22] above.

[25] In its Statement of Defence filed in the Employment Court the Appellant averred that the Respondent was terminated for acts of sabotage, insubordination, abuse of company assets and theft. None of these allegations were specified in the termination letter.

[26] When dismissing an employee summarily for gross misconduct under Section 33(1) of the ERA an employer should specify with sufficient detail the alleged gross

misconduct to enable the employee to be aware of and to answer the specific allegations of gross misconduct.

[27] In this case all the Appellant stated in its termination letter was that the Respondent was being terminated for failure to adhere to policies set out by the company which they considered warranted summary dismissal without specifying those policies. Indeed the Appellant's Counsel conceded in the course of her submissions before this Court that a Company Policy in relation to termination did not exist at the relevant time.

[28] The Judge stated the following in her Judgment in relation to the termination letter:-

- “31. It is clear from the letter of termination that the plaintiff was terminated for gross misconduct. The gross misconduct was as a result of not complying with the company policies. The letter of termination is very vague. It does not give the employee any specific(s) of what actions of hers amounts to non-compliance of the company polices which was deemed as gross misconduct. The letter also fails to provide or outline the company policies that were breached.*
- 32. With the letter that was sent to Mohini Lata, she was left to speculate what she did that warranted summary dismissal. A letter of this nature breaches the legislative requirement to give to the worker written reasons of the dismissal. This letter hardly serves any purpose of reasoning. It is as bad as not providing any reasons to the employee. I consider the letter of termination as unfairly precluding the employee from knowing the reasons for being terminated.*
- 33. The spirit of the legislation is that the parties operate in good faith towards each other during the term of the employment relationship and when the relationship is being ended by a party. An employee who is terminated from employment for a lawful cause needs to know and understand why he or she is being dismissed.*
- 34. If the letter does not specifically states the reason for dismissal, the employer cannot require the court to examine the reasons it provides at the trial to determine the justification of the causes for termination. The employer is precluded from relying on any reasons*

*that it has not stated in the letter of dismissal to justify the termination.*

35. *The court cannot and will not endorse the employer's conduct of drafting termination letters which does not specifically mention the reasons for termination. To do so would amount to granting the employer an unfair advantage. The unfair advantage arises in this way: if the employer is allowed to rely on a general allegation in a letter of dismissal, at the trial it will then have a free reign to rely on matters that did not form the basis of the dismissal. This is what has happened in this case. I will show how the employee is unfairly dealt with by the employer.*
36. *In this case, it is only during the filing of the defence that the employer once again vaguely states that the plaintiff's act of insubordination, sabotage, abuse of office and theft has led to her dismissal. Once again no specifics are mentioned. It is not said in the defence as to what amounted to insubordination, sabotage, abuse of office and theft. All that the defendant says is that these acts were committed when the plaintiff worked her notice period.*
37. *The specific allegations were only outlined during the trial. How can the employee be expected to address those specific matters when it was not brought to her attention any earlier? This is a very unethical and unfair act of the employer which if endorsed by the courts will impact greatly on the workers' rights...*
40. *All that I need to determine is whether the employee has breached the company policy thereby being guilty of misconduct. Since there is no specific misconduct mentioned, I find that the employer did not have and show a proper cause to terminate the employee. If it did, the cause would be specifically mentioned in the letter of dismissal. I need not go any further than this in determining whether the employer had a lawful cause to terminate the employee..."*

[29] The Appellant submitted in its submissions before this Court that notwithstanding the lack of specificity in the termination letter the Respondent had been given the right to be heard at various meetings with the Appellant and that the Judge had erred in law and fact in failing to take this into account in reaching her decision. This is not correct. The Judge in her Judgment did

address the meetings and considered the evidence in respect of the same. She concluded that from the evidence it was unclear what the specific reasons were for her termination. I agree with that finding.

[30] Furthermore the Judge also found that the Appellant in its pleadings and at the hearing introduced allegations of misconduct which were not raised at the time the meeting of the 18<sup>th</sup> August took place or at the time the termination letter was issued. She considered this to be unfair against the Respondent. I agree.

[31] There may be circumstances, where correspondence and dealings between the employer and employee can be taken into account, together with a termination letter that does not give specific reasons for the termination, to determine that the requirements of Section 33(2) have been complied with. This has not been established in the circumstances of this case however, the facts concerning what transpired in the various meetings between the Appellant and the Employee were contested and inconclusive.

[32] I am satisfied that the Appellant did not comply with the requirements of Section 33 in the circumstances of this case.

[33] The Appellant has not appealed against the remedies awarded and I therefore need not consider the same.

### **Conclusion**

[34] In answer to the issue whether in the circumstances of this case the termination of the Respondent's employment by the Appellant was lawful, for the reasons set out above, I find that it was not.

[35] I can find no reason to disturb the judgment of the Employment Relations Court.

[36] The Respondent in her written submissions filed in this Appeal submitted that there should be a further order for payment of interest on the Judgment sum. Counsel for the Respondent repeated this claim at the hearing for interest to be paid on the judgment sum at the rate of 4% per annum from the time of entering the judgment until the same shall be satisfied pursuant to Section 4(1) of the Law Reform

(Miscellaneous Provisions) (Death and Interest) Act 1935. I consider this claim to be reasonable.

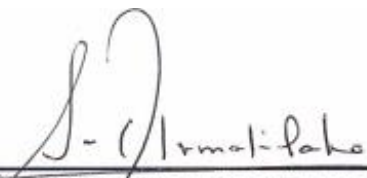
**Dobson, JA**

[37] I agree with the reasons and orders proposed in Morgan, JA's judgment.


**Orders of the Court**

1. *The Appeal is dismissed.*
2. *The Judgment of the Employment Relations Court dated 27 November 2020 is affirmed.*
3. *The Appellant is to pay interest on the Judgment sum to the Respondent at the rate of 4% per annum from the time of entry of judgment by the Employment Relations Court until the same shall be satisfied.*
4. *The Appellant is to pay costs of this appeal to the Respondent in the sum of \$3,000.00.*
5. *The Appellant shall pay the total sum under (3) and (4) above to the Respondent within 21 days hereof.*



  
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**Hon. Justice Chandana Prematilaka**  
RESIDENT JUSTICE OF APPEAL

  
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**Hon. Justice Walton Morgan**  
JUSTICE OF APPEAL

  
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**Hon. Justice Robert Dobson**  
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