

**IN THE STATUTORY TRIBUNAL, FIJI ISLANDS**  
**SITTING AS THE EMPLOYMENT RELATIONS TRIBUNAL**



## Decision

<b>Title of Matter:</b>	<b>Dr Khairul Azam</b>	<b>(Grievor)</b>
	<b>v</b>	
	<b>Fiji National University</b>	<b>(Employer)</b>
<b>Section:</b>	<b>Section 211(1)(a) Employment Relations Promulgation</b>	
<b>Subject:</b>	<b>Adjudication of Employment Grievance (Claim of Breach of University's Academic Regulation)</b>	
<b>Matter Number:</b>	<b>ERT Grievance 139 of 2016</b>	
<b>Appearances:</b>	<b>Mr D Nair, for the Grievor</b> <b>Messrs R Chand and S Singh, for the Employer</b>	
<b>Date of Hearing:</b>	<b>Hearing on the Papers</b>	
<b>Before:</b>	<b>Mr Andrew J See, Resident Magistrate</b>	
<b>Date of Decision:</b>	<b>19 July 2017</b>	

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### Background

1. This grievance has been referred to the Tribunal in accordance with Section 194(5) of the *Employment Relations Promulgation 2007*. The Grievor is an academic of long standing and claims that he has been disadvantaged and discriminated against by the University, for unjustifiable allegations of plagiarism that have undermined his academic and research reputation. It is further alleged by the Grievor, that following claims of plagiarism, the University had failed to renew his employment contract.

### Initial Attempts by Tribunal to Resolve Matter by Mediation

2. At the outset of these proceedings, the Tribunal indicated to the parties, the preference to have this matter determined in an informal manner. That is, by considering the process that had been relied upon by the University and to look at the possibility of having the findings of the University reviewed by a separately constituted Academic Review Panel.

3. Following a series of meetings held between the parties under the auspice of this Tribunal, the Grievor was not willing to have a further review undertaken. Instead, what was sought by the Grievor was for the Tribunal to issue a finding as to whether or not, the University was entitled to complete a process pertaining to issues of academic misconduct, in circumstances where the Grievor's employment with the University had been brought to an end.

#### **The Employment of the Grievor**

4. The Grievor was initially employed as the Visiting Professor in Fisheries, based at the Department of Fisheries, College of Agriculture, Fisheries & Forestry, Navua. The offer of employment made on 9 April 2014, was for a two year period, that was subject to a renewal provision, in which case at least three months prior to the expiration of the initial term, the Grievor was to be notified as to whether the contract was to be extended.
5. At some point in time, Dr Azam was transferred from his initial appointment to the position of Visiting Professor within the Department of Food Science, College of Engineering, Science and Technology. Thereafter, on 10 March 2016, the Grievor was advised that his appointment as Visiting Professor in that role would not be extended beyond 30 June 2016.
6. Following the University's notice of intention to not renew the Grievor's contract of employment, on 15 April 2016, Dr Azam received communications from a Ms Samshad Bibi, Human Resource Officer, in the following terms:-

***Subject : Allegation of Plagiarism Research Grant Application***

*Dear Dr Azam,*

*It has been brought to the attention of HR that you have applied for a research grant using the research Project of one of your former student's at USP named Jyanti Jyotishma Singh that was submitted by the student in 2013.*

*Attached is your grant research application and Ms Singh's project.*

*We have noted direct plagiarism in terms of the ingredients and ingredient quantities and the processes and the content used in the attached documents specifically your grant application as compared to Ms Singh's project.*

*The act of plagiarism and attempts to cheat is a staff disciplinary issue that constitutes to a (sic) gross misconduct and hence could lead to a termination of one's employment if found guilty.*

*The HR Policy classifies this as a gross misconduct under the category of misconduct, specifically in the following clause:*

7. *Categories of Misconduct*

*8.5 Gross misconduct: k. Cheating or doing anything which may assist a person to cheat in relation to assessment, research, publications or consultancy, including but not limited to plagiarism.*

*Therefore you are advise (sic) to provide your response to the above allegation by COB on Monday 18.04.2016.*

*With thanks and regards,  
Samshad Bibi (Ms)  
HRO*

8. The complainant who brought the allegations of academic misconduct to the attention of the University, was the Associate Dean of the Faculty of Science, Professor Tyagi. The complaint made to the Dean of the College of Engineering, Science and Technology, dated 14 March 2016, in effect invites the Dean, to

*Go through the same and decide whether the research project conducted by Ms Jyanti Jyotishma Singh is the same (or different) as the one submitted to CEST-CRC for funding.*

#### **Response to the Allegations**

9. On 18 April 2016, the Grievor provided a response to allegations set out within Ms Bibi's communications. Within that communication, the defense of the proposal as approved in the CRC Research Grant Application is set out. That response included the fact that there had been no identification of the species to be utilised as part of the CRC Project and the fact that the production outcomes were to yield 18 as opposed to 2 discrete products warranting analysis. The conclusion of the investigation undertaken by the University and the position endorsed by the Chancellor, was that Dr Azam did not acknowledge any of the earlier works undertaken by Ms Jyanti Singh, that formed part of the Research Project she had undertaken under the supervision by the Grievor at the University of South Pacific.
10. In a subsequent email communication sent to the Grievor by Ms Bibi on 1 August 2016, Dr Azam was advised that he had been found guilty of plagiarism on the basis that he had not acknowledged the work of the student that he supervised, from which the research application had been at least, in part, reliant upon. Whether that view was well formed is not at issue, as the Grievor did have an opportunity provided from the Tribunal to have the question of academic misconduct, re-assessed.
11. The Grievor takes issue with the fact that the Employer has made and recorded its findings, after the time in which the employment contract between the parties had come to an end. In effect, the grievance now relates to the fact that the Employer should not have taken any further action in relation to the matter, following the time in which the employment contract expired. The Grievor raises an objection to any subsequent treatment by the Employer, as being in breach of Section 11(1) of the *2013 Constitution*. It is also argued that there is implicit within the way in which a public body exercises its statutory function, the obligation to do so within the confines of a trustee exercising that power and where there is no absolute power to act without due consideration.<sup>1</sup>

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<sup>1</sup> See *Dewa v The University of South Pacific* [1994] FJHC 175 (18 November 1994).

12. The Tribunal cannot find any relevance in the Grievor's reliance upon Section 11 of the Constitution, nor the decision of *Dewa*. The Tribunal cannot find any obstacle in allowing the University to conclude its investigation into any allegation. The correspondence of the University is clear insofar as it had no intention of taking any further action, save for the fact that it would appear to have made a record within its own staff recruitment data base, that the Grievor was not to be re-employed.

#### **Conclusions**

13. The Grievor was given the opportunity before this Tribunal to have the University review its findings, by constituting an Academic Review Panel that would also include a nominated representative of Dr Azam. After much deliberation, the Grievor's Representatives indicated that this was not an issue that it sought to pursue.

14. The Tribunal concludes that the Employer was entitled to finalise its report into the allegations levelled against Dr Azam. Whether the process adopted by the University in interrogating the allegation was a good one, is of course subject to some speculation, but despite that fact, the University was entitled to respond to the claim and it did so. The University was entitled to satisfy its own corporate mind as to whether there had been some failure by Dr Azam to recognise the earlier project work of one of his former students, when putting forward a grant proposal. It did so and there is no reason that is identified by the Grievor that would indicate that it had no power to take such action.

15. The grievance is dismissed on that basis.

#### **Decision**

It is the decision of this Tribunal that the grievance of Dr Khairul Azam against the Fiji National University is dismissed.

A handwritten signature in black ink is written over a blue circular official stamp. The stamp contains the text "EMPLOYMENT RELATION TRIBUNAL" around the perimeter and "OFFICIAL" in the center, with a small star at the bottom.

**Mr Andrew J See**  
**Resident Magistrate**