

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



Interlocutory Decision

Title of Matter: Reshmi Mala Shiromani (Grievor)
v
Ministry of Education, Heritage and Arts (Employer)

Section: Section 211(a) *Employment Relations Act 2007*

Subject: Adjudication of Employment Grievance

Matter Number: ERT Grievance 140/16

Appearances: Mr D Nair, for the Applicant
Mr A Prakash, Attorney Generals Chambers, for the Employer

Date of Hearing: 12 September 2018

Before: Mr Andrew J See, Resident Magistrate

Date of Decision: 12 September 2018

KEYWORDS: Section 211(a) *Employment Relations Act 2007*; Demotion of Employee, Disciplinary Board Meeting; Natural Justice and Allegations of Misconduct; Hurt and Humiliation.

Background

- [1] On 7 July 2016, the Grievor made a request to have an employment grievance referred to the Mediation Service. The essential thrust of that application was, it was claimed, that the Grievor had been demoted in her employment, in a manner that gave rise to what is generically referred to, as an 'unfair dismissal' claim. Within the Form 1, the Grievor states that the employer had alleged that "she was bullying and (involved in the) emotional abuse of students, (made) derogatory statements against the Honourable Minister for Education, providing misleading information, insubordination and threatening".
- [2] The unresolved grievance was referred to this Tribunal on 17 August 2016.
- [3] At the first mention of the grievance on 3 October 2016, it is a matter of record that there was no appearance by the Employer. There was also no appearance of the Employer when the matter was called on 9 December 2016.

- [4] On 19 December 2016, the Employer was represented by the Attorney General’s Chambers and took objection to the matter proceeding in this Tribunal on the basis that a discrete Public Service Disciplinary Tribunal was established by virtue of Section 120 of the *Constitution of the Republic of Fiji* 2013. A decision in relation to that threshold challenge, was issued by the Tribunal on 25 January 2017¹.
- [5] On 9 February 2017, the Employer wrote to the Grievor seeking to reinstate her to her substantive level within the Ministry, in effect advising the employee, that the demotion that had been imposed, “was not within the authority of the Permanent Secretary”.
- [6] On 10 February 2017, Mr Prakash on behalf of the Employer, requested additional time in order that the Employer could consider its position further. Despite the Tribunal thereafter giving the parties time to negotiate the outstanding issues arising, what ultimately transpired was that on 6 April 2017, the Employer instituted charges against the employee, alleging breaches of the *Civil Service Code of Conduct* and by letter issued on 4 July 2017, then suspended the Grievor without pay, in effect for the purpose of making good the earlier disciplinary decision that it was seeking to institute.
- [7] At the report back held on 30 August 2017, the Tribunal was advised that in relation to the allegations of breach of the *Civil Service Code*, that the matter was now before the Public Service Disciplinary Tribunal. A residual issue in this matter, in relation to the lost earnings of the employee, was nonetheless dealt with under the auspice of the Tribunal and ultimately after a series of conferences and brief case reviews, the Employer agreed to pay the employee, the sum of \$9026.68 for lost earnings arising out of the demotion.
- [8] On 10 November 2017, this Tribunal subsequently adjourned the case to the Registry to await the outcome of the Public Service Disciplinary Tribunal proceedings and consider whether there were any residual matters arising out of the initial grievance, that still needed to be addressed.
- [9] By decision dated 5 March 2018, that Public Service Disciplinary Tribunal recommended that the Grievor be severely reprimanded and that quantum of salary that was withheld during her suspension period, be forfeited.
- [10] When this matter returned to the Tribunal on 2 July 2018, a further direction had to be issued against the Employer when it became apparent that the Grievor had not been paid her wages from 3 May 2018 to 2 July 2018. Essentially what is now being pressed before the Tribunal is a claim for hurt, humiliation and distress as a consequence of the conduct of the Employer during the relevant period that gave rise to the initial grievance being made.

¹ *Shiromani v Ministry of Education, Heritage and Arts* [2017] FJET 1; ERT Grievance 140.2016 (25 January 2017)

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- [11] At today's proceedings, the Tribunal sought to explore with the parties their respective positions, as to whether or not there remained any issues to adjudicate, or whether or not by virtue of the decision of the Public Service Disciplinary Tribunal, there was no further scope for the Grievor to pursue her complaint.
- [12] In order to better understand the position of the parties, the Tribunal had requested through Mr Prakash, that the Ministry ensure that a representative attend the ongoing proceedings before the Tribunal.
- [13] When it came to explore the issues as to what was it that the Grievor now sought and why she said that there was still a degree of hurt and humiliation arising from the conduct of the Employer, she began to inform the Tribunal of the way in which a Disciplinary Board Meeting was conducted by the Employer, the humiliating way in which she was treated at that meeting and the fact that the Employer had relied on an audio recording, that it claimed was the Grievor making derogatory statements about the then Minister for Education. It should be noted here, that the Grievor flatly denies that the voice heard on that recording is hers and remains traumatised by that experience.

Evidence of Mr Manuelli Caginitabale

- [14] As a result of this serious allegation, it was necessary for the Tribunal to ascertain whether or not any such audio recording was relied upon by the Employer at its Disciplinary Board Meeting. Mr Caginitabale, who was the Employer's representative, confirmed that this was the case and that the recording was initially provided to the Ministry by the Head Teacher at that school. Thereafter, when being questioned by the Tribunal under oath, the representative became somewhat evasive and was either unwilling or unable to assist the Tribunal understand this issue. Mr Caginitabale claimed for example, that the recording was held on a USB stick, then later could not say how the recording was first provided to the Employer². Mr Caginitabale told the Tribunal that he was a member of the investigating team that looked at Ms Shiromani's case, then said he had no recollection as to who were the other investigators as part of that process.
- [15] At one stage, Mr Prakash suggested to the Tribunal, that the representative had a role as an administrative person only and would really be unable to answer the questions being put³. At another point, Mr Prakash sought to take opposition with the pursuit of this matter, purportedly claiming that the question of the recording and its content, that related to statements about the Minister, was somehow a fresh complaint.
- [16] The Tribunal has made it very clear to Counsel that the allegation and grievance in relation to the Grievor's purported derogatory statements, is very much a part of the initial grievance. Furthermore, the Tribunal regards such a claim now made by the Grievor that she had been the victim of a fabricated audio recording that was used in the Employer's disciplinary process, to be a very serious issue.

² Ms Shiromani told the Tribunal that at the Disciplinary Board Meeting it was played on someone's mobile phone.

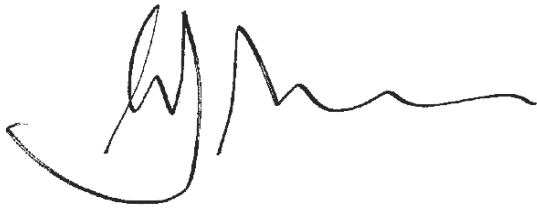
³ This seems a somewhat odd comment to be made, if this then was the Employer's Representative at proceedings and Mr Caginitabale admits to having been a member of the investigating group.

[17] To that end and due to the fact that Mr Caginitabale seemed unable to provide the Tribunal with the answers and information that it sought, an Order will now be issued to the Permanent Secretary, seeking that she produce to the Employment Relations Tribunal, Government Building Registry, Suva within 7 days hereof, all records pertaining to the meeting of the Disciplinary Staff Board conducted on Wednesday 8 June 2016, held in her custody, possession or control; including:-

(a) The production of the original or copies of the digital recording that was played at that meeting, whether held on an electronic storage device or having been downloaded or copied onto a personal computer, laptop, hard drive or other storage facility, maintained or in the possession or control of the Ministry.

(b) Copies of all hard copy documents or electronic records containing any communications, memoranda or minutes relating to that Disciplinary Staff Board meeting, whether dealing in part or whole with the allegation contained within Ministry Correspondence "TPF 55624" dated 7 June 2016, where it has been alleged that the Grievor had "Breached (the) PSC Code of conduct by making false claims against the Ministry and the Hono(u)rable Minister for Education".

[18] An order to give effect to this decision, will now be issued to the parties and the matter will be relisted for review on Friday 21 September at 3.00pm.



Mr Andrew J See
Resident Magistrate