



Employment Relations Tribunal

Decision

Title of Matter: Poasa Turaganisolevu Raqio
v
Fiji Sugar Corporation Limited Ltd (FSC)

Section: Section 211 (1)(k) *Employment Relations Act 2007*

Subject: Adjudication of Grievance Arising Out of Dismissal

Matter Number: ERT Grievance No 10 of 2019

Appearances: Mr D Nair, for the Grievor
Mr N Tofinga, for the Employer

Date of Hearing: 17 July 2019

Before: Mr Andrew J See, Resident Magistrate

Date of Decision: 18 October 2019

KEYWORDS: Dismissal arising out of employment; Section 211 Employment Relations Act 2007; Misconduct as an employee.

Background

[1] This is a grievance that was referred to the Tribunal in accordance with Section 194(5) of the *Employment Relations Act 2007*, on 1 November 2018. The Grievor claims to have been unjustifiably dismissed from employment as a Field Co-ordinator, Fiji Sugar Corporation on 20 September 2018 and seeks by way of remedy, reinstatement in his employment and compensation for lost wages arising.

[2] The basis for the dismissal decision arises out of allegations made against the Worker in response to complaints received from the then Permanent Secretary. The allegations were as follows:

- (i) That the Grievor had demanded a \$1 per tonne of cane for the lorries that he had arranged to cart cane from within his sector;
- (ii) That he incorrectly charged the harvesting claim to a grower;
- (iii) That he took money to arrange for cutters for a farm in Malau sector;
- (iv) That he borrowed money on three occasions from a farmer in his sector and also from a grower in that sector; and
- (v) That he undertook measurements of cane under the cane planting grant, that were incorrect and caused an overpayment of monies.

The Evidence of the Employer

[3] The first witness to give evidence on behalf of the Employer was Mr Kameli Batiweti, who is the General Manager Corporate Services, for the Fiji Sugar Corporation (FSC). The Witness provided the tribunal with a chronology of events that gave rise to the dismissal of the Worker (See Exhibit E1). A critical part of the Employer's case, was that of the explanation by Mr Batiweti of a meeting that took place on 24 July 2018, in which the various allegations were brought to the attention of the Grievor. The details of the Grievor's written response to those allegations were contained within a letter marked as "Document B" within Exhibit E1. The essential thrust of that letter in response, is that the Grievor denied any wrong doing and attributed the claims of dishonesty that were levelled against him, as coming about due to pressures and competition amongst growers and lorry drivers. Mr Batiweti referred the Tribunal to various documents sourced as part of the investigation process that were ultimately put to the Grievor. These included a statement from a Mr Anup Prakash that claimed to have heard the former Field Co-ordinator demanding a commission for cane cartage¹; the ongoing requests of Mr Jayant Ram, to have various harvesting and transport expenses incorrectly charged against his farm account, reversed (Document "F"); a complaint of borrowing monies and other conduct consistent with abuse of office by a Mr Gajraj Singh (Document "G"); a further complaint of borrowing monies from a Mr Ram Chandar (Document "H"); and a complaint from a Mr Ratnesh Lal, that the Grievor had requested for the payment of monies purportedly to cover the cost of a gang of workers, as a precondition to him arranging for the carting of cane from one farm (Document "I").

[4] According to Mr Batiweti, at the interview conducted on 17 August 2018, in the presence of his Union representatives, the Grievor was taken through the allegations and given the opportunity to question any of those farmers who had provided the Employer their statements of complaint. The Witness told the Tribunal that this interview was recorded by the Employer and transcribed (Exhibit E2) and in most, if not all of the incidents tabled at that meeting, the Grievor denied any involvement. It was the evidence of the Witness, that ultimately as a result of the meeting and to give the Employer an opportunity to discuss the matters further, that the Grievor was suspended from his duties.

[5] During cross examination, the Witness was asked to clarify how the initial investigation came about and thereafter explained the nature of some of the allegations, particularly that relating to the overpayment of grant monies, based on incorrect measurements of farming land 3724. Mr Batiweti also clarified the audit process that gave rise to the investigation and admitted that the subsequent statements secured by the auditor were not included within his report dealing with the overpayments of the cane planting grant.

The Case of the Grievor

[6] The first witness called on behalf of the Grievor was Mr Sandeep Sharma, General Secretary of the Sugar Milling Staff Officers Association. Mr Sharma was firstly referred to the statements within Exhibit E1 and made the observation that these were all written in the same handwriting². During cross examination, the Witness admitted not having raised any issues of concern at the

¹ See Document E within Exhibit E1.

² The Tribunal finds this common practice and would be more concerned if the signatures were similar.

interview meeting conducted on 17 August 2018 and acknowledged that in relation to the otherwise hearsay nature of the statements provided within Exhibit E1, that he understood the Employer would have brought the complainants to the meeting, had the Grievor sought for it to do so. During cross examination the Witness was taken through the record of the interview on 17 August and conceded that nowhere within that record was there any mention of the Union seeking any additional evidence prior to the disciplinary decision being taken.

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[7] The Grievor is 52 years of age and commenced working for the employer in 1988. The Grievor explained how the allegations were first brought to his attention and the way in which he responded to those in writing, as part of the process. The Witness told the Tribunal that he did know those person who had made the complaints regarding the borrowing of monies and alleged secret commissions. In relation to the overpayment of the grant monies based on incorrect measurements, Mr Raqio said that there was no purchase order given to the grower and that he himself had messaged the office with a reading of 3 acres. The Witness thereafter stated that how it was recorded as 5 acres and how the order was completed, he did not know. During cross examination some discussions ensued as to the neutrality of the meeting location in which the investigation interview was conducted and the Grievor also acknowledged that he refused the request to have any of the complainants attend the meeting, in order that he could confront them in relation to their allegations.

Analysis of Issues

[8] The issue of the care and attention that is required to be exercised by employees of the Fiji Sugar Corporation, was canvassed in the case of *Leger v Fiji Sugar Corporation*.³ Whether in the case of Mr Raqio the conduct was willful or negligent, is not really the balancing point in relation to this matter. The Tribunal is of the view that it is the broader conduct that characterizes the behavior of the Grievor. The general depiction of the Grievor is that he had been operating in an environment where he was abusing his position. Whether it was in relation to the borrowing of monies, the taking of secret commissions or whatever, these were the allegations that the Employer had put to him and for whatever reason in the presence of his Union, the Grievor elected not to confront those persons who had made the allegations.

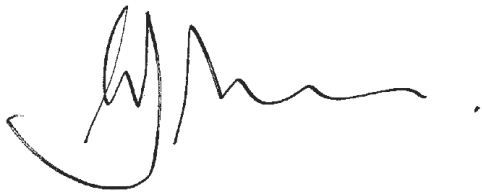
[9] It is hard to comprehend, why that was the case. This was not a situation where the employer had the onus to prove beyond reasonable doubt that the Grievor was guilty of the conduct as alleged and that by refusing to challenge the complainants, that at best the allegations were hearsay. The Employer had offered to bring the complainants to that meeting, should the Grievor wish for that to happen. The Grievor's own witness acknowledged that state of affairs. This is an industry, particularly at this time, that needs to ensure the reputation of its 'front line' is beyond reproach and that farmers, cutters and drivers all have confidence in the way in which the field coordinators are to conduct themselves. In the case of the sugar cane grant, that is public monies, that are accountable and where there is zero tolerance for misuse or gross mistake. Insofar as the other allegations are concerned though, issues such as secret commissions or the asking for loan monies is an abuse of position. Particularly, if it is being used as some form of threat to these business operators.

³ [2018] FJET 22; ERT Grievance 216 of 2017 (12 June 2018)

[10]The Tribunal finds the dismissal decision is justifiable for the purposes of Section 230(2) of the *Employment Relations Act 2009*. This is a case that should not have proceeded to arbitration. Particularly given that the Union were present at the investigation interview and were complicit in the decision taken by the Grievor that he not confront those who had brought the complaints against him. To fail to resolve this matter earlier, demonstrates a lack of objectivity on the part of those who have advised the Grievor to this point. Whilst the Tribunal will not make any costs orders against the Grievor on this occasion, there must come a point in time where Employers should rightfully be able to recover costs, in cases where matters are brought to arbitration either vexatiously or with no reasonable prospects of success and in cases where so much should have been clear to the representatives.

Decision

[11]It is the decision of this Tribunal that the Grievance be dismissed.



Andrew J See
Resident Magistrate