

**IN THE EMPLOYMENT RELATIONS TRIBUNAL
AT SUVA**

ERT Grievance No. 17 of 2023

BETWEEN: JOYCE VIJAY LATCHMI

GRIEVOR

AND: HEALTHCARE (FIJI) LTD T/A ASPEN MEDICAL

EMPLOYER

Appearance

Mr. Karunaratne. J, Ms. Prasad. R for the Grievor

Ms. Seibouma. L for the Employer

Date of Hearing: 25 February, 2025

Date of Decision: 11 July, 2025

DETERMINATION OF THE EMPLOYMENT RELATIONS TRIBUNAL

Introduction

1. The Grievor - Joyce claims she was unlawfully and unfairly dismissed. Her termination on 2 January, 2023 followed a workplace incident where she lodged a report with the police over a missing bracelet. A junior staff member was picked up from work, questioned and had his house searched but was not charged. As the Human Resource Manager, the Employer says Joyce should have handled it internally first and that her actions undermined a respectful and fair workplace.

Issues

2. The following issues arise in this matter:
 - (a) Whether the termination was lawful and fair as claimed by the Employer; and
 - (b) If not, the appropriate remedies that the Grievor is entitled to.

Burden and standard of proof

3. The Employer must show that the termination was fair, lawful, and followed proper procedures. They must prove this on the balance of probabilities - meaning it is more likely than not that the dismissal was justified. Tribunal must carefully examine the evidence to see if it supports the charges, rather than simply rubber stamping the Employer's decision.

Evidence, Law and Analysis

- A. Whether the Grievor was lawfully terminated.

4. Employer claims Joyce was terminated for failing to resolve issues internally, within her team, which created an atmosphere of distrust amongst her team. These reasons, if proven, could amount to gross misconduct, based on the nature and seriousness of the conduct and the impact on the employment relationship, particularly whether it irreparably damages trust and confidence.
5. It is not in dispute that Joyce did not raise the missing item issue with Nalin (suspect) or HR before going to police. In her first report, she suspected her partner but due to vague information, police filed it as “Investigation Refused” (IR). Later, she provided more details and named Nalin as the prime suspect. She also complaining to their superiors about police officers inaction. On Friday, she told police Nalin was in Lautoka, and a team picked him up.
6. Clause 4 of the Code of Conduct requires staff, “*where appropriate*”, to first attempt resolution of complains, disagreements, or grievances internally. The Tribunal acknowledges that, in certain circumstances particular where potential criminal conduct is suspected, external reporting may be warranted. However, I do not think that the issue is about reporting to the police. Joyce did not just report that “an incident had occurred” and requested investigation. She identified Nalin as the prime suspect based solely on personal suspicion. In my view, the real issue is that she **prematurely** escalated the grievance to the police, bypassing internal mechanisms which she herself was responsible for managing without due consideration of the consequence on Nalin and the Employer arising from such action.
7. Notably:
 - (a) Joyce failed to conduct any internal inquiry into the missing item despite having the authority and means to do so;
 - (b) She did not ask Nalin if he had seen the bracelet, reviewed CCTV footage, or report the matter to her supervisor.
 - (c) Instead, she bypassed all internal mechanisms and escalated the matter directly to the police.

This materially affected Nalin, being subjected to police questioning and a search of his residence in the presence of his elderly parent. This premature escalation to external authorities exposed the Employer company to a foreseeable risk of public scrutiny particularly given its status as a newly established entity.

8. This is not a minor oversight, it is a fundamental failure to apply the very standards Joyce was entrusted to uphold.

9. Joyce contends that had Edwin, the Head of Department, initiated an internal inquiry upon learning of the incident, she would have immediately halted the police investigation (**Q&A 20, Minutes of First Inquiry**). This implies that the failure to pursue internal procedures lay not with her, but with her supervisor. However, by her own admission, Joyce had already lodged the police report by the time she raised this expectation with Edwin. Thus, any reference to halting the investigation is speculative. As Human Resources Manager, Joyce bore primary responsibility for initiating internal grievance procedures under clause 4 of the Code of Conduct. It was not incumbent upon the Head of Department to instruct or remind her of a process she should be familiar with and charged with enforcing.
10. Further to this, the evidence shows that she accused Nalin without evidence and told junior staff (Saheel and Varanise) he was the “prime suspect.” She also informed Saheel that Nalin should expect a police call, creating an atmosphere of suspicion. She coerced Varanise to support a false narrative about Nalin questioning her about locking the office and another employee (Salvindra) to falsely claim Nalin had not paid for a jointly purchased sheep, which was later disproven. The Tribunal notes that Joyce does not dispute or challenge her colleagues’ testimony/ evidence.
11. Joyce used her senior position to pressure junior staff into supporting her suspicions. Her actions led to fear, confusion, and reputational harm to Nalin. As HR Manager, she was responsible for protecting staff from exactly this kind of behavior. The CCTV evidence and Salvindra’s correction show that Joyce’s claims were not only unsubstantiated but contradicted by facts. The coercion, and abuse of authority were a breach of the Code of Conduct. There is a breakdown of trust as Joyce can no longer be trusted to lead or protect staff. Given her senior role and the harm caused, dismissal is not only justified, it is necessary to uphold the integrity of the workplace and protect other employees.
12. The Employer has shown that he held an honest belief that there has been misconduct by the employee, that there were reasonable grounds for that belief; that he had carried out as much investigation into the matter as reasonable in all the circumstances. The Tribunal is satisfied that the decision to dismiss the Grievor fell within the range of reasonable responses available to a reasonable employer. I will now move on to the procedural objections made.
13. Joyce’s entire defence focuses on procedural and technical objections, challenging policy drafts, notice formalities, and disclosure practices in an apparent “scattergun approach”, which she argues renders the charges defective. I will deal briefly with each objection below.

Whether Grievor was victimised when given the option to resign

14. Courts recognise that offering resignation can be a protective measure for the employee’s reputation. Employer witness stated that “*he recruited her in December and had a personal*

ambition to see her succeed. He did not want the incident to reflect badly on the company.”
As affirmed by Wati J in *Lateef & Lateef Lawyers v Mosese* [2019] FJHC 54; ERCA 16 of 2011 (13 February 2019), at para. 39:

“The mere fact that the employee was asked to resign and not summarily dismissed does not affect the lawfulness of the dismissal as there was an acceptable reason why the emp'oyee was asked to resign and not summarily dismissed. The employer did not want the employee to have that tag of being terminated as she had been with the firm for many years.”

15. Joyce asserts that she was pressured by her superior, Edwin, to resign or face termination. However, this claim is undermined by her own submissions. Notably, in paragraph V, page 7 of *Applicant Submission*, she states: *“I proposed to the direct report to conduct an investigation and suspend with pay as per clause 25 of the employment contract.”* This proposal suggests that she was not operating under immediate duress or coercion, demonstrating a clear understanding of her rights.
16. Also, even when she declined the offer to resign, no immediate retaliatory action was taken against her. Instead, the Employer followed a formal disciplinary process, suspending her with full pay, holding two hearings, and providing an opportunity to respond. Thus, I find no basis to conclude that the resignation offer amounted to duress or victimisation.
17. The Grievor contends she was given only one hour to decide whether to resign or be terminated. I find this does not amount to coercion or a procedural flaw capable of invalidating the process. She demonstrated awareness of her contractual rights by invoking clause 25 in her proposal to suspend with pay. There is no evidence the limited timeframe misled her or caused her to act under duress. Accordingly, the Tribunal rejects this ground as insufficient to render the disciplinary proceedings unfair or invalid.

Employer's reticence on the non-finalised status of Disciplinary Policy and Code of Conduct

18. Joyce argues that the company failed to properly implement its policies and thus this was a breach of section 110 of the Act and rendered the charges defective.
19. Tribunal notes that Joyce clearly knew that the policies (or some at least) were still in draft stage. Of course, As HR lead, she was in charge of finalising these policies and responsible for onboarding of new staff and policy explanation (even if this responsibility was delegated at times), reinforcing her expected familiarity.
20. Despite the Grievor's submission that company policies were not properly implemented, the record demonstrates the following:

(a) **Disciplinary Policy (Exhibit G1):** the June 7, 2022 email to Joyce confirms it was circulated in draft form, with her feedback required. This shows Joyce received access, making her claims of ignorance difficult to sustain.

(b) **Code of Conduct (Exhibit G2):** Joyce admitted in cross-examination that she received this policy on her first day of work, contradicting her initial claim. In any event, arguments about whether she received it on the first day of work or whether an induction occurred do not undermine the existence of said policies.

21. In my view, the absence of formal disciplinary policies would not necessarily nullify proceedings. Even without formal policies, disciplinary proceedings must follow fair and reasonable procedures, that is, employees should be given adequate notice, a chance to respond, and an unbiased hearing. To hold that the absence of formal policies alone nullifies disciplinary action would create an unreasonable barrier as organisations that are still developing their policies would be unable to conduct disciplinary proceedings.

22. Further, the application of section 110 of the Act is misplaced. The said provision requires that every employment contract contain clear procedures for settling an employment grievance (see clause 14 of employment contract). Even if there are no agreed procedures, the procedures set out in Schedule 4 of the Act automatically kicks in. Section 110 becomes relevant *after* the disciplinary inquiry, when the employee can lodge a grievance with the Ministry of Employment.

Disclosure of witness statement

23. During cross-examination, Employee admitted that certain written statements were withheld and justified the decision by claiming the Applicant did not express unfamiliarity with the process at the initial meeting, implying no need to disclose further information. Joyce was shown Salvindra's email to which she stated that he was not competent to write such an email and that Nalin had typed the letter. For purpose of clarity, I note that Joyce had requested for the statement of Varanisease asserting that she may have changed her statement regarding Nalin accompanying them to the stairs (**No 10, Minutes of second hearing**). I also note that Grievor may be referring to the Minutes of first hearing as there is no record of a separate written statement of Varanisease.

24. Tribunal notes that regardless of the shifting accounts or claims made by Joyce and Varanisease, the CCTV footage provides the only objective account of what occurred. It confirms that Nalin was not present at the stairwell as claimed by Joyce, and if Vara initially supported that version, it also renders her account factually inaccurate. This also supports the panel's finding of coercion on Varanisease to support Joyce's version of events.

25. The record shows:

- (c) The Grievor knew the background and nature of the allegations as per letter dated 13 December 2022.
- (d) She attended two inquiry sessions (15 & 29 December 2022).
- (e) She submitted written responses (13 December & 18 December 2022).

26. None of the aspect of the witness testimony as per findings in the termination letter was challenged before this Tribunal. She did not question their credibility or factual accounts. Thus, I do not see how this omission alone fatally undermined procedural fairness.

27. Furthermore, there is no requirement for the right to hearing after the guilt is proven that shows lawful causes exists to summarily dismiss (see again the case of *Isoa Latianara*): here the Employment Relations Court has provided that:-

"...if there is serious misconduct, then it is the prerogative of the employer to terminate the employment immediately. If all these procedures of hearing and explanations are accorded to the employee, then the purpose of summary dismissal is lost..." (at page 8).

Investigator and chairperson

28. It is submitted that the disciplinary inquiry was chaired by Edwin, whom had gathered and assessed the evidence, framed the allegations, and initially offered the Grievor the option to resign. Employer witness explained that there were two sets of management running at that time and he could not get someone above his level.

29. I note that a fair-minded observer, apprised of these facts, would reasonably apprehend bias or a perceived bias. However, that irregularity can only merit the setting aside of the termination if the Tribunal is satisfied that as a result of that breach, Grievor has suffered a substantial injustice.

30. As McNair J in *Rotheray (E.) & Sons Ltd v Carlo Bedarida & Co* [43] observes:

*"The more difficult question, however, is whether the extent of that irregularity is such as to justify interference by this court either by way of setting aside the award or remitting the award. The determination of that issue...depends upon **whether the court is satisfied that there may have been – not must have been – or that this irregularity may have caused – not must have caused – a substantial miscarriage of justice** that would be sufficient to justify the setting aside or remitting of the award, unless those resisting the setting aside or remission could show that no other award could properly have been made than that which was in fact made, notwithstanding the irregularity."*

31. On the evidence presented, particularly the inquiry Minutes, the Grievor did not substantiate any instance where Edwin was biased towards her during the inquiry whether

through questions asked or otherwise which materially affected the conduct or outcome of the hearing. Accordingly, the Tribunal is not satisfied that the perceived bias resulted in a substantial injustice.

32. Tribunal notes that Employer had lawful cause to summarily dismiss Grievor under section 33 of the Act. The option extended to the Grievor to resign appears to have been made reasonably, given the strength of evidence available to the Employer at the time. As previously stated, summary dismissal under section 33 does not require a hearing process where the Employer possesses sufficient and credible evidence to warrant termination.

Not enough time to respond to charges

33. Grievor claims she was not given sufficient time to respond to the charges upheld. She was given approximately two days before the first hearing and 14 days before the second hearing to submit a response. She has not provided any suggested time to determine whether enough time was given, or that that she had asked for further time. Tribunal notes that Employers must give the employee a “reasonable” opportunity to prepare which was done in this case.

Non existent clause 6

34. The Grievor claimed the charges were flawed, arguing that clause 6 of the Code of Conduct, on which the charges were based, did not exist. During cross-examination, the employer’s witness explained that the Code of Conduct had since been updated, and clause 6 is now reflected as clause 4.1. After reviewing clause 4.1 (“Promote a Positive Work Environment”), I am satisfied that it aligns with the substance of the charge.

Letterhead

35. The Grievor argued that internal letters should have had the company letterhead. The Tribunal finds that these were internal documents, so letterheads were unnecessary. There is no evidence the absence of a letterhead misled or prejudiced the Grievor. Accordingly, this issue does not amount to a procedural defect and cannot invalidate the proceedings.
36. In conclusion, whilst noting that the procedures may not have been perfect, the Tribunal finds that none of these grounds rise to a fatal defect.

B. Was the execution of the dismissal fair?

37. To decide if the dismissal was unfair, the Tribunal must consider how the employer carried it out. The key question is whether the Employer acted in a way that was harsh, aggressive, humiliating, degrading, or caused embarrassment, damage to reputation, or emotional harm to the worker (see *Yanuca Island Limited trading as Shangri Law Fiji Resort and Spa v Vani Vatuaruku* [2017] FJHC92 at [61]).

38. There is no evidence that the Grievor was not treated fairly or without dignity during her dismissal. She was paid all entitlements and notice pay. While losing her job was understandably distressing, she had financial support to sustain herself until she found new employment.

Conclusion

39. The Employer has shown that he held an honest belief that there has been misconduct by the employee, that there were reasonable grounds for that belief; that he had carried out as much investigation into the matter as reasonable in all the circumstances. The Tribunal is satisfied that the decision to dismiss the Grievor fell within the range of reasonable responses available to a reasonable employer. Also, there is no evidence that the Grievor was not treated fairly or without dignity during her dismissal.

Final orders

- i. The Employer's decision to summarily dismiss the Grievor is lawful and fair. Accordingly, the Grievor's grievance claim is dismissed.
- ii. No remedy for reinstatement is awarded to the Grievor given that the relationship seems to be broken beyond any repair.
- iii. The parties will bear their own cost in this matter.



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Ms. Mary Motofaga

Resident Magistrate

11 July, 2025

