

**THE EMPLOYMENT RELATIONS TRIBUNAL**

**AT SUVA**

**ERT Grievance Case No.13/2023**

**BETWEEN : SANJAY MENON**

**Grievor**

**AND: FIJIAN COMPETITION & CONSUMER COMMISSION**

**Employer**

Appearances:

Mr. A. Prasad for the Grievor

Ms. Prasad .B. for the Employer

Date of Judgment/ 23 April, 2025

DECISION

**KEYWORDS:**

***EMPLOYMENT LAW- GRIEVANCE OF UNJUSTIFIABLE AND UNFAIRLY DISMISSED-  
RELIEF SOUGHT FOR COMPENSATION.***

**LEGISLATION:**

## ***THE EMPLOYMENT RELATIONS ACT 2007***

### **Employment Relations Grievance**

This is a grievance that has been referred to the Tribunal from the Mediation Service in accordance with Section 194 (5) of the *Employment Relations Act 2007*. On 23 February, 2023, the Grievor received a letter from his Employer, non-renewal of employment contract.

***“The griever claims that he was unjustifiably and unfairly dismissed from work therefore he is seeking reinstatement and compensation.”***

The Grievor, Sanjay Menon registered his employment grievance against his former Employer, Fijian Competition & Consumer Commission, with the Ministry of Employment on 23 January, 2023. The mediation session held on 21 February, 2023 and 28 February, 2023, were unsuccessful.

On 1 March, 2023 the employment grievance was referred to the Employment Relations Tribunal for adjudication.

The employment grievance was listed for mention on 19 April, 2023 and the Grievor was given 21 days to seek legal representation and the matter was listed for mention on 2 August, 2023.

On 2 August, 2023 the parties were directed to file their preliminary submissions within seven weeks and the employment Grievance was listed for mention on 15 September, 2023

On 15 September, 2023, the parties were granted an extension of 14 days to file its preliminary submission and the matter was listed for mention 24 January, 2024 to fix a hearing date.

On 24 January, 2024, the matter was listed to fix a hearing, and the matter was fixed for hearing on 25 April, 2024, and the parties informed the Tribunal that they intended to call a total of 2 witnesses.

On 25 April, 2024, hearing is vacated and the matter was relisted for hearing on 22 August, 2024.

### **The Case of the Employer**

The Employer stated in its preliminary submission that the employee was not terminated, but his employment contract came to an end. The Employer stated that as per the Open Merit Recruitment System (OMRS) Grievor's position was advertised to the general public and he was given opportunity to apply for the post. According to the Employer the Grievor was short listed for interview but he was unsuccessful and his contract was not renewed.

### **Employer's Evidence**

Ms. Litea Matakibu, Manager Human Resources gave evidence for the Employer. In her evidence Ms. Matakibu stated that her duties required to manage the Human Resources department effectively in terms of selection and recruitment so as to meet the business requirement. In her evidence she stated that the Grievor's employment contract had come to an expiration. The witness further stated that the Grievors post was advertised and he was short listed for interview but he was unsuccessful in his interview and his employment was not renewed.

The Employer concluded the case making the following documents as exhibits

E1: Grievor's Employment Contract dated 20/1/20

E2: Email dated 03/02 /23

E3: Grievor's ER Form 1

### **The case of the Grievor**

In his evidence the Grievor stated that he was employed by the Fijian Competition & Consumer Commission and he had worked for the employer for 26 years without any adverse reports. The Grievor stated that he was employed as a Senior Compliance Officer.

The Grievor in his evidence stated that on 1 November, 2022 he received a letter from the Manager Human Resources and Training stating that his employment contract will come to an end on 20 January 2023. The Grievor further stated that the Manager Human Resources and Training had advised him that due to Open Merit Recruitment System his position will be advertised to the general public and he can also apply for the same position. The Grievor stated that he had received an email on 3 February, 2023, advising that his employment contract was not renewed. The Grievor said that he was shocked that his contract was not renewed.

### **Analysis and the law**

The issue of summary dismissal is provided for in Part 5 of the ERA sections 33 as follow:

#### ***Summary dismissal***

**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 workers 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.**

**Section 34** where it states:

***"If a worker is summarily dismissed for lawful cause, the worker must be paid on dismissal the wages due up to the time of the worker's dismissal".***

Based on the evidence, the Tribunal has to determine whether the dismissal was lawful. The Tribunal must consider whether the cause of termination and the process which led to termination was proper. Hence, the Tribunal must establish whether the Employer had accorded procedural fairness at the time of and leading to the termination.

During cross examination the Grievor stated that he had followed up with the General Manager Corporate in relation to his employment contract which was coming to end on 20 January, 2023. The Grievor further stated that then the letter was issued to him on 1 November, 2022, and states that his post will be advertised due to open merit recruitment system.

The Grievor stated that his employment contract expired on 20 January, 2023, but he was advised 13 days later. The Grievor claimed that he was unfairly dismissed.

There is no denial by the employer that it did not give the employee the 3 months' notice as required by the contract in absence of which the contract provides for payment in lieu of notice. I cannot fathom why the employer is trying to justify the delay by saying that it was going through the Open Merit Recruitment System. That may be so but that should not mean that it gets the powers or the rights to act contrary to the contract and Human Resources Policies Manual.

The Grievor stated that the Employer had breached its own Human Resources Policies Manual. The Employer did not comply with clause 23.5.4 of the HRPM. The Grievor submitted that the Staff Review Exercise and Contract Renewal clause 23.5.4 of the Manual clearly stated that the Human Resources Department shall advise the employees at least three (3) months prior to the expiry of the contract on whether the contract would be renewed or not, but in this case the Grievor claimed that he was not given 3 months' notice. The Grievor claims that the Employer had acted in bad faith and his termination was unfair and unlawful therefore he is seeking reinstatement and compensation. The Grievor's letter of notification for end of employment contract as follows;

**Re. Notification for End of Employment Contract**

*This letter is to notify you that your current employment contract dated 20 January 2020 with FCCC will come to an end on 20 January 2023.*

*FCCC practices Open Merit Recruitment System (OMRS) as such your position will be advertised to the general public. As the current holder of the position, you are given the opportunity to apply and your application will be considered along with the other candidates*

*In the interim, we are optimistic that you will continue to perform your designated roles and responsibilities in the most efficient and effective manner and FCCC wishes you all the best for your future endeavors.*

*Should you have any clarification, please feel free to contact the Human Resources Department.*

*Yours Sincerely,*

.....

**Litea Matakibau (Ms)**

**Manager Human Resources and Training**

Ms Matakibau in her evidence stated that the Grievor was aware and he was notified that his employment contract was coming to an end on 20 January, 2023. The witness further stated that

the Employer is practicing Open Merit Recruitment System which required the position held by the Grievor to be advertised to the general public and the Grievor was given full opportunity to apply which he did in this case. However, the witness stated that the Grievor had not raised any complaint or made any demand in relation for the renewal of his employment contract. The witness said that the position was advertised and he had participated in the selection process.

*In the case of Dewa v University of the South Pacific [1996] FJHC 125; Justice Pathik stated:*

*'Here no doubt Dr. Dewa feels aggrieved by the manner in which the matter of the renewal of his contract was handled. He has therefore come to Court by way of judicial review as he was a member of the staff of the USP at the time when his contract was not renewed'. Justice Pathik quoted the decision of Sir John Donaldson in R v East Berks Health Authority (1984) 3 AER at 429 who stated:*

*"The ordinary employer is free to act in breach of his contracts of employment and if he does so his employee will acquire certain private law rights and remedies in damages for wrongful dismissal, compensation for unfair dismissal, an order for reinstatement or re-engagement and so on...."*

*In R v The Mayor and Commonalty and Citizens of the City of London ex parte Matson MATSON [1997] 1 WLR 765 CA it was held, inter alia, that:*

*"...fairness and natural justice required that the alderman elect should have been given reasons, because .... (g) the alderman elect's rejection was bound to cast a shadow on his reputation; (b) the giving of short reasons by the court of alderman would not impede the court in the exercise of its powers, but would, on the contrary, enable it to ensure that its decisions in every case are sound, manifestly just, and in the interest of the City".....*

*The following passage from the judgment of LEGGATT LJ in R v CIVIL SERVICE APPEAL BOARD ex parte CUNNINGHAM (1991 4 A.E.R. 310 (C.A.) at p.325 is apt:*

*"There are not here, as in certain contexts there are, any valid grounds for adhering to the general rule that there is no duty to give reasons. On the contrary, there are here particular grounds for departing from the general rule. Mr. Cunningham has a legitimate grievance, because it looks as though his compensation is less than it should be, and yet he has not been told the basis of the assessment. ... The cardinal principles of natural justice are that no one shall be a judge in his own cause and that everyone is entitled to a hearing. But the subject-matter of the decision or the circumstances of the adjudication may necessitate more than that.".....*

*On the right to be heard before a person's livelihood is adversely affected, the Fiji Court of Appeal in the matter PSC v LepaniMatea (CA 16/98) upheld that:*

*"The requirement that a person be given a fair opportunity to be heard before a body determines a matter that affects him adversely is so fundamental to any civilized legal system that it is presumed that the legislative body intended that a failure to observe it would render the decision*

*null and void. If there are no words in the instrument setting up the deciding body requiring that such a person be heard the common law will supply the omission”.*

In **Vodo v SCA Hygiene Australasia** this Tribunal referring to the decision of **Northrop J in Selvachandran v Peron Plastics Ltd (Dec 329/95: VI 1322R/94)** considered how the term valid (or justified) could be relevantly considered as follows:

*“...the adjective valid should be given the meaning of sound defensible or well founded. A reason that is capricious, fanciful, spiteful or prejudiced could never be a valid reason...at the same time the reason must be valid in the context of the employee’s capacity or conduct or based upon the operational requirements of the employers business. Further in considering whether a reason is valid, it must be remembered that the requirement applies in the practical sphere of the relationship between an employer and an employee where each has rights and privileges and duties and obligations conferred and imposed on them. The provisions must be applied in a practical common sense way to ensure that the employer and the employee are treated fairly”*  
(Emphasis added)

It is clearly established in this case that the Grievor’s employment came to end without any valid reason as stated by the Employer. Reason being the Grievors was one of the outstanding performing employee with key performance indicators assessment (KPI) carried out in 2021 and in 2022 and he was given increment in December, 2022. As such the Tribunal finds that there was no valid reason given by the Employer to terminate the Grievor’s employment. As per the evidence adduced before the Tribunal, I find that there was no valid reason for termination of employment.

Grievor’s non-renewal of employment contract letter as follows:

**NON RENEWAL OF EMPLOYMENT CONTRACT**

*Dear Mr. Menon*

*Thank you for attending your recent interview for the position of Senior Enforcement Officer.*

*We very much enjoyed meeting you during the interview and we have now had the opportunity to consider all the candidates against the criteria we have specified for the job.*

*The decision has been a difficult one, as the overall standard of candidates was high. After careful consideration, we regret to inform you that on this occasion we have decided not to progress with your application any further, which means that your contract will not be renewed.*

*Thank you for your contributions and interest in FCCC. We wish you every success in your future career.*

*Kind regards*

*Litea Matakibau*  
**Manager Human Resources & Training**

*23.5.4 Human Resources Department shall advise the employees at least three 3 months prior to the expiry of the contract on whether the contract would be renewed or not. Even if the performance of an employee was satisfactory, FCCC reserves the right to decline a contract renewal if the human resources department review shows that there shall be no need during the next three 3 years for the position and / or the skill(s) the employee possesses.*

## **16. Renewal**

*16.1 The Contract is for an initial period of three (3) years and renewal will be subject to performances*

*16.2 Where upon assessment of the Employees performance within the three (3) years. The Employer finds it to be of unsatisfactory performance, the Employer will at its discretion advertise the position (one month prior to expiry) and the Employee will be notified in writing of the same.*

The Tribunal finds that the parties had agreed that the contract could come to an end even when there is no cause to bring it to an end. The benefit of this clause was not only extended to the employer but to the employee as well. The Tribunal finds that both parties had voluntarily agreed to enter into such terms. The Tribunal is satisfied that they are bound by the same and if the employer has relied on that provision, the employee cannot require that other reasons be given to him. The Grievor stated that he was terminated with notice.

The Grievor further stated that he was provided with a written statement which set out the reasons for his non-renewal of the employment contract dated 3 February, 2023. The non-renewal letter of the employment contract was tendered in as evidence.

The evidence before the Tribunal that Grievor's non-renewal of employment contract letter sets out the reason for the termination and the reason itself is that the employer has decided to exercise its contractual right to terminate the employment without cause.

## **Unfair**

*23.5.4 Human Resources Department shall advise the employees at least three 3 months prior to the expiry of the contract on whether the contract would be renewed or not. Even if the performance of an employee was satisfactory, FCCC reserves the right to decline a contract renewal if the human resources department review shows that there shall be no need during the next three 3 years for the position and / or the skill(s) the employee possesses.*

The Tribunal finds that the Employer had breached clause 23.5.4 of the Human Resources Policies Manual. The employment contract clause 23.5.4 states that "**Human Resources Department shall advise the employees at least three 3 months prior to the expiry of the contract on whether the contract would be renewed or not**". The Tribunal finds that the Grievor was unfairly terminated reason being he was not given 3 month notice that his employment contract will not be renewed or his position will be advertised due to open merit recruitment system.

Furthermore, the Tribunal finds that the Open merit recruitment system came into effect sometime in August 2021. The Tribunal find that the Employer did not address this to their employees that the employer will practices open merit recruitment system and those staffs employment contract is coming to an end will not be renewed based on their KPI. The Tribunal also finds that the Employer failed to reflect the Open Merit Recruitment System in its Human Resources Policies Manual. As a result the Tribunal finds that the Grievor's non-renewal of employment contract for another term is unfair and unlawful.

The Tribunal finds that each employment termination grievance which is referred to the Tribunal is difficult and serious. And the decision has significant consequences for the workplace, the Grievor and his family. To ensure that the Tribunal settles the Grievance in a just manner, the evidence, particularly when it is contradictory, must be weighed carefully and responsibly. One way of doing this is to assess "*its harmony with preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions*" (Faryna-v-Chorny [1952].2D.L.R 354 at pages 356-7.

The Grievor had stated in his Form ER1 that according to the Human Resources Policies Manual clause 23.5.2 "FCCC reserves the right to renew the employee's contract for another three (3) year period if it deems necessary on the basis of commendable or exceptional performance." The Grievor further states that looking at his performance he was given increment in December, 2022 and his KPI was 90% in the last assessment and he was shocked that his employment contract was not renewed for another term.

#### **Staff Review Exercise and Contract Renewal**

*During every contract period, all employee contracted for three (3) years shall undergo staff review exercise at least six (6) months before the contract is to expire.*

***FCCC reserves the right to renew the employee's contract for another three (3) year period if it deems necessary on the basis of commendable or exceptional performance. (Emphasis added)***

*This assessment should be done by the Head of Department, and she/he shall submit a report on the employee performance and reasons for renewal to the Human Resources Department who shall then submit the report to the chief Executive officer to make the decision to whether renew the contract or not to .*

Tribunal finds that the Grievor was sent home and told his family that he no longer has a source of income and how he will provide for the family requires channelling the termination without proper notice with dignity and respect to find another employment.

In light of above I cannot imagine the critical moment whether or not he sustained any hurt to his feelings, but in ordinary circumstances, being sent home without any explanation whatsoever (least being given an opportunity to be heard) had to have had his dignity and self-respect offered in the manner in which he was terminated.

This was tested in the 1997 decision of the Supreme Court of Canada in *Wallace v United Grain Growers Ltd.*, [1997] 3 S.C.R. 701 the Court had rejected judicial recognition of *bad faith*

*discharge* either in contract or tort but injected into the employment relationship the requirement of "good faith conduct" at the time of termination, where in passing the Court spoke of "*special relationship*" which governs the parties to an employment relationship. The Court had stated that:-

*"..., at minimum, ... in the course of dismissal employers ought to be candid, reasonable, honest and forthright with their employees and should refrain from engaging in conduct that is unfair or is in bad faith by being, for example, untruthful, misleading or unduly insensitive..." (at page 46).*

The Tribunal concluded that the Grievor was not treated fairly.

Therefore the Tribunal award that the Grievor is to be compensated.

#### **Final Orders**

1. It is hereby ordered that the Grievor's application for reinstatement for unlawful dismissal is dismissed.
2. It is further ordered that the Fijian Competition & Consumer Commission to compensate Mr. Sanjay Menon 4 month's wages within 21 days of this decision.
- 3 Under Section 230 (1) (c) (i) the employer to compensate Mr. Sanjay Menon further 2 month compensation for humiliation, loss of dignity and injury to his feelings: and
- 4 The Employer will compensate the Grievor a total of 6 months wages within 21 days of this decision.

The parties are to bear their own costs.

Dated at Suva this 23 April, 2025.



**Aleem Shah**  
**Legal Tribunal**