

**IN THE EMPLOYMENT RELATIONS TRIBUNAL**

**AT LABASA**

**ERT Grievance Case No. 128 of 2020**

**BETWEEN : FIROZ IQBAL**

**AND : FIJI SUGAR CORPORATION**

Appearances:

*Ms M Naco for the Grievor*

*Ms K Singh for the Employer*

Date of Determination: 27<sup>th</sup> February 2025

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**DETERMINATION BY THE EMPLOYMENT RELATIONS TRIBUNAL**

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**CATCHWORDS:**

***EMPLOYMENT LAW – UNLAWFUL AND UNFAIR DISMISSAL***

**LEGISLATION:**

***THE EMPLOYMENT RELATIONS ACT 2007 (“ERA”).***

**1.0 Employment Relations Grievance**

**1.1 Background to the Grievance**

This grievance was registered with the Ministry of Employment on 29 November 2019. Mediation was attempted on 25 February and 22 June 2020 but was not successful.

The mediator had referred the grievance to the Employment Relations Tribunal (or “ERT”) in accordance with s194 (5) of the Employment Relations Act 2007 (or the “ERA 2007”) on 22 June 2020 outlining the nature of unsettled employment grievance with the following terms of: -

***“Unfair, Unlawful and Unjustified Dismissal – (Remedy – Reinstatement)”.***

## **2.0 Cause before the ERT**

- 2.1** At first call in the Employment Relations Tribunal (or “the ERT”), on 28 July 2020 both parties agree to mediation which was held on the same day however the attempt to resolve the matter was unsuccessful and the parties had endeavoured to proceed by way of preliminary submissions to hear the substantive matter. The employer filed on 12 August 2020 and the grievor filed on 10 December 2020.
- 2.2** The Tribunal fixed the hearing on 5<sup>th</sup> May 2021 however due to the COVID 19 outbreak, the hearing was fixed for 21<sup>st</sup> June, 2022. The hearing was finally fixed for 27<sup>th</sup> August 2024 and the case proceeded to a defended hearing on that day. The grievor gave sworn testimony in support of his claim whilst the employer called one witness.

## **3.0 Background to the Claim**

- 3.1** In the preliminary submission, the employer submitted that the grievor commenced work with the employer as a Tractor Driver at Bucaisau Sector, Labasa Mill at the time of his dismissal.
- 3.2** The employer further submitted that on 30<sup>th</sup> October 2019 at 11:30am, the grievor had assaulted one Amar Singh, a grower in the Bucaisau Sector at Vulovi Supermarket. The matter was reported to Management at 11:35am on the same day. At 3:30pm the victim was asked to write his statement and by 4:50pm, the grievor was asked by Mr Rajnesh Narayan ASM (Agricultural Services Manager) and Mr Sheik Aiyaz Ali HRO (Human Resource Officer) to write his statement.
- 3.3** The employer stated that on the next day, 31<sup>st</sup> October 2019, Management had reviewed the statements and evidences against the grievor and had found him guilty.
- 3.4** On 1<sup>st</sup> November 2019, Management had written to the grievor a show cause letter outlining the details of his action and for the grievor to respond by 4<sup>th</sup> November 2019.
- 3.5** On 4<sup>th</sup> November 2019 at 9:10am, the grievor had responded to the show cause letter. The employer further submitted that on 5<sup>th</sup> November 2019, Management had reviewed the mitigatory submissions with the grievor together with his Union representatives. He was also asked whether he had missed anything in his written submissions to which the grievor admitted and apologised for his actions on 30<sup>th</sup> October 2019.
- 3.6** The employer submitted that on 6<sup>th</sup> November 2019, Management had again reviewed the discussions held on 5<sup>th</sup> November 2019 and made the decision to terminate. On 6<sup>th</sup> November 2019, the grievor was terminated and the Certificate of Service was issued to the grievor. On the next day 8<sup>th</sup> November 2019, the grievor was given his final payment of dues to his bank account.
- 3.7** The employer further submitted, that they had conducted training for the grievor whilst working for the company on Employee Induction, FSC’s Human Resource and Health and Safety Induction Program, Motor Vehicle Policy and his Job Description.

- 3.8 The employer therefore submits that the grievor's termination is fair, lawful and justified.
- 3.9 On the other hand, the grievor maintains that he was unfairly terminated from his employment by the employer as he strongly denies the allegations put forth by the employer.
- 3.10 The grievor submits that he was not given natural justice or an opportunity to be heard by an independent third party but rather that the employer acted as the judge and jury and prosecutor and terminated the grievor despite compelling evidence that the grievor was not at fault.
- 3.11 The grievor stated that he was a by-stander and only got in between the other two individuals to stop them from throwing punches at each other and breaking out into a fist fighting contest in front of the public as this had taken place in a supermarket.
- 3.12 In that regard, the grievor further submits that he should be appreciated for assisting the parties from any further harm should they have continued with their fist-fighting.
- 3.13 The grievor therefore further submits that the employer must show proof on the balance of probabilities that the employer had acted fairly and that all such processes were undertaken for his case.
- 3.14 The grievor states that the employer had not exercised good faith in the process of his termination thereby leading to the unfairness of the employer's actions. In addition, the grievor submits that he was taken aback by the employer's rushed actions to lay unfounded allegations against him which led to his loss of employment including the loss of dignity to his spouse, family, friends and to the community at large.
- 3.15 The grievor is therefore asking to be compensated for his loss of earnings, injury to feelings, loss of dignity and any other remedy as seen fit by the Tribunal.

**4.0 Essentially then the issues for determination by the Tribunal are:**

- a) Whether the termination is fair as claimed by the employer?
- b) If not, is the grievor entitled to the relief sought by him?

**5.0 Evidence on behalf of the Employer**

**Mr Shafeel Khan (Human Resource Officer)**

- 5.1 In his testimony, Mr Khan stated that he had worked with Fiji Sugar Corporation Labasa for the last 13 years and became a Human Resource Officer for the past two months.
- 5.2 The witness stated that his role with the employer consisted of recruitment and selection of employees, employment relation matters, conducting Training Programs, implementing OHS requirements and ensuring security for all employees.

- 5.3** The witness briefly explained the FSC Disciplinary procedure as follows:
- a)** once a complaint is received (whether internally or from outside);
  - b)** the employer forms an Investigation Panel where the Manager is often included;
  - c)** Interviews are conducted;
  - d)** Policy documents are looked at;
  - e)** Decisions are made;
  - f)** Whether an officer is suspended or terminated;
  - g)** Time is given for the officer to respond; and
  - h)** The decision to suspend or terminate is made by the panel.
- 5.4** The witness also explained that he had known the grievor as an employee for the last five years and that the grievor had a contract dated 4<sup>th</sup> February 2019 which was for a period of three years. The witness also stated that the grievor was bound by the collective agreement.
- 5.5** The witness also stated that the allegations against the grievor was manhandling which was considered a gross misconduct. The Panel had found him guilty of this and therefore terminated him.
- 5.6** Furthermore, the witness insists that procedures were followed in this case where the Investigation Panel formed for the grievor's matter consisted of the Manager, the Department Head and one more additional staff in which they had interviewed the grievor, the complainant, store workers and also looked at the CCTV footage of the incident. From this, the witness said that the Panel had made a decision for summary dismissal due to manhandling. The witness stated that the grievor was then given time of three days to respond or to show cause.
- 5.7** The witness also said that on the 3<sup>rd</sup> of November 2019, the grievor had responded to the letter saying that he admits to the allegation. However, despite the grievor's response, the witness said that the Panel was standing by their decision and that on 7<sup>th</sup> November 2019, the grievor was given the final termination letter and the certificate in the presence of union representatives.
- 5.8** The witness added that the grievor was also paid all outstanding dues by the 11<sup>th</sup> of November 2019 and he therefore maintains that the grievor was in fact lawfully and fairly terminated.
- 5.9** In cross examination, the witness said that the FSC disciplinary proceedings is written in their employee contracts specifically on page 3. He also said that the grievor did not work for FSC prior to 2019.
- 5.10** When asked to define what manhandling meant, the witness said that it was when the grievor had physically touched the complainant and aggressively pointing at him.
- 5.11** The witness also said that the employer had zero tolerance for manhandling or harassment, in that the word "must" was being used in their disciplinary procedure and therefore it means zero tolerance. This according to the witness is the reason why the employer decided to dismiss the grievor rather than suspend him.

- 5.12** The witness confirmed in re-examination that the Panel had considered the grievor's admission to his actions as important to his dismissal.
- 5.13** The employer tendered the following exhibits:
- E1:** Copy of Form ER1;
  - E2:** Copy of Notice to attend Mediation dated 21/02/2020;
  - E3:** Copy of Form 3 – Certificate of Mediation dated 22/06/2020;
  - E4:** Copy of Letter from Firoz Iqbal Ali dated 3/11/2019;
  - E5:** Copies of Investigation Report by Fiji Sugar Corporation Limited ("FSC");
  - E6:** Copy of Letter from FSC to Grievor dated 1/11/2019;
  - E7:** Copy of Letter from FSC to Grievor dated 7/11/2019;
  - E8:** Copy of Discharge Certificate by FSC dated 7/11/2019;
  - E9:** Copy of Letter from Kamal Kumar dated 15/11/2019;
  - E10:** Copy of Voluntary Statement by Satish dated 14/11/2019;
  - E11:** Copy of Contract dated 04/02/2019;
  - E12:** Copy of Induction handbook from pages 6 – 8;
  - E11:** Copy of Voluntary Statement by Shiu Prasad dated 14/11/2019;
  - E12:** Copy of CCTV Footage of the incident; and
  - E13:** Grievor's Salary Slip dated 11/11/2019.

## **6.0 Evidence on behalf of the Grievor**

### **Grievor – Mr Firoz Iqbal Ali**

- 6.1** In his testimony, the witness stated that he had gone to the shop to buy juice and chicken with his boss for the company's re-loaders where the incident took place.
- 6.2** The witness further stated that he had gone inside the shop to stop the fight between his boss and Mr Amar Singh and he argues that the CCTV footage was wrong. He also stated that after they had left the shop, the staff from the office had come into the shop to investigate the incident.
- 6.3** The witness explained that he had worked for FSC since 2007 as an Office Attendant before becoming a Tractor Driver. He added that he had indeed admitted to pushing Mr Amar Singh's face but that this was a conspiracy since both him and the complainant, Mr Amar Singh were both farmers and that Mr Singh was trying to remove him from his work with FSC.
- 6.4** The witness said that he was wrongfully terminated and was never interviewed and neither was his boss, Kamal Kumar who was there at the scene of the incident.
- 6.5** The witness said that he was married with one child and was not able to find suitable employment after his termination. Additionally, he said that he only works four times a year during cane cutting season driving the cane truck.
- 6.6** The witness argued that he could have been suspended instead of being dismissed.

- 6.7 During cross-examination, the witness said that he had tried to stop the fight but that his hand had hit Mr Singh's cheek. He also said that he was not aware that there was a CCTV footage of the incident however he insists that he was there to push the two parties apart.
- 6.8 The witness also said that he had asked a friend to reply to the allegations since he was not well educated however he believes that there was a conspiracy since his boss had gotten away with a warning and he was only given three days to submit his case.
- 6.9 The witness further said that he had worked for FSC for 13 years from 2006 to 2019 and he strongly believes that due to his years of service, he should have been suspended or warned instead of being dismissed. He also strongly believes that the employer had not given him due process including not interviewing his witness and therefore his dismissal is wrong and unfair. He said that he therefore wants to be reinstated as well as compensated.

## 7.0 Analysis and Law

- 7.1 Section 33(1) of the Employment Relations Act 2007 (ERA) sets out the grounds for summary dismissal. Section 33(2) of the ERA mandates that the employer must provide written reasons for the dismissal at the time the employee is dismissed as per below:

- (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 order 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 worker's 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"*

- 7.2 The issue before the Tribunal is whether the dismissal was justified, whether the procedures followed by FSC were proper and whether the grievor was accorded natural justice.
- 7.3 Where procedures are concerned, the case of *Carpenters Fiji Limited v Isoa Latianara ERC No. 7 of 2011*, where the Employment Relations Court made the following observation, and where the Tribunal is also bound to follow the same path outlined therein: Her Ladyship Justice Wati noted as follows:-

*"...It is my duty to comment more on the procedure to terminate "for a cause" and "without a cause". In any given situation, the employer is not obligated under the termination clause to give any opportunity of hearing, as found by the Tribunal. When the termination is without cause, what is there to hear the employee on?"*

*“...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 the employee, then the purpose of summary dismissal is lost...” (at page 8).*

7.4 Here the employee is being terminated with cause as the employer has confirmed that the employee has committed a serious breach of conduct, which has led to this termination. Her Ladyship, Justice Wati is clear on this issue in that the employer can proceed to terminate without necessarily according the procedure for hearing which is the purpose of summary dismissal.

7.5 The Legal Tribunal in **Pillay v Carpenters Fiji Ltd [2013] FJET 12; ERT Grievance 84.2011 (16 January 2013)** further explains that;

*“Isoa’s case is perhaps not so clear whether or not any procedures are required to ascertain the guilt of the grievor (and what sort of procedures should be used) prior to declaring the alleged conduct “serious”, but it is quite clear that once a serious (or gross) misconduct is established in substance, then procedural fairness is not required for purposes of a summary dismissal. To that end, the employer could immediately proceed to terminate the grievor.”*

7.6 The grievor’s contract on page 3 on conduct, states:

*“You will agree to undertake all duties and responsibilities in a professional manner always, with a commitment to good relationship with persons, companies, clients and organisation with whom the Corporation has business relationships or potential relationships.” (my emphasis)*

7.7 In addition, the General FSC Code of Conduct states as follows:

- ❖ ... An employee must treat everyone with respect and courtesy, and without coercion, intimidation or harassment of any kind...
- ❖ ... An employee must at all times behave in a way that upholds the Values of FSC, and the integrity and good reputation of FSC. ... (my emphasis)

7.8 Further, the employer, FSC had declared that the grievor’s action is serious and thereby required a harsher punishment of instant dismissal although they provided further opportunities to the grievor to defend his case.

7.9 Isoa and Pillay’s cases (ibid), clearly explains that if the employer has found that the breach is a serious misconduct, the opportunity for hearing the grievor’s side of the story is not required for the purposes of summary dismissal. Here, the employer still provided the opportunity to the grievor in accordance with natural justice.

**7.10** The Termination letter states as follows:

*Mr Firoz Iqbal Ali  
C/- Field Department  
Fiji Sugar Corporation Limited  
Labasa Mill*

*Dear Firoz*

*It has been reported to the Management that on 30 October 2019 at approximately 11:30am, you whilst employed as a Tractor Driver at the Bucaisau sector with the FSC Labasa Mill, manhandled one Amar Singh, a Cane Grower (Farm Number 22237) Bucaisau Sector at the Vulovi Supermarket.*

*On 30 October 2019, you were interviewed by Human Resource Officer, Sheik Aiyaz Ali and Agriculture Services Manager, Rajnesh Narayan in relation to the allegation of manhandling one Asmar Singh.*

*The above is a serious breach of the General FSC Code of Conduct protocol especially when you take the Law in your hands and act aggressively. Such behaviour is unacceptable to Management and tantamount to Gross Misconduct.*

*Copies of your statement, video footage and victim are enclosed for your information and review.*

*Given the above, Management is inclined to issue you a termination letter. However, Management would like to provide you an opportunity to submit a written explanation to Show Cause why you should remain as an employee of FSC. You are encouraged to seek the assistance of your Union Representative/Executives, Friend or Colleagues.*

*As such, you are requested to submit a written explanation by 10am 04 November 2019. If Management does not hear from you by 10am on 04 November 2019, it will proceed to make a decision based upon the facts as stated in this letter. In the meantime, if you have any question, please call the Human Resource Officer, Sheik Aiyaz Ali on 9991545 or send an e-mail on [sheika@fsc.com.fj](mailto:sheika@fsc.com.fj).*

*Yours faithfully,  
GENERAL MANAGER*

**7.11** From the above, the summary dismissal clause (in relation to s33 of the ERA 2007) was determined as the termination letter had articulated the reason for the termination of manhandling being a gross misconduct. The cause was justified on the basis of being a serious misconduct. In that regard, the situation is similar to what is held in *Isaa's* case on the position of the procedure for hearing.

**7.12** Further, Her Ladyship, Justice Wati stated:

*"...it is not the aspect of right to be heard that leads to unfair dismissal. **It is the manner of treating the employee in carrying out the dismissal that must be considered.** The employer's actions must be assessed to ascertain whether the employee was treated with fairness, respect and dignity in carrying out the dismissal" (emphasis added).*



7.13 The grievor was subsequently interviewed and he had the opportunity to defend himself, regardless of the outcome or decision of the employer at the end of the investigation process. He still denied this.

7.14 In addition, the grievor had admitted during examination in chief and during cross examination that he had indeed physically touched the complainant.

7.15 The CCTV footage of 30<sup>th</sup> October 2019 at Vulovi Supermarket visibly shows the grievor reaching out his hand towards the complainant's face and pushing the complainant's head back twice. The complainant's head clearly jerked back upon the grievor's hand coming into contact with the complainant's face. It was not a light push, it was deliberate and forceful enough to result in the jerking of the complainant's head. Physically assaulting a person is a gross misconduct and often not tolerated by employers. The complainant may have been verbally rude towards the grievor's boss, Mr Kamal Kumar, however the complainant did not touch or physically assault Mr Kumar that required the response from the grievor. This was confirmed by Mr Kumar's statement in that the complainant had only rudely asked about his sugar supply.

7.16 In *Pacific Coatings Ltd v Sahai* [2016] FJHC 3; ERCA08.2014 (8 January 2016), Her Ladyship Justice Wati stated and I quote:

*"Such abusive and discourteous behavior at work is not tolerated by most employers and regarded as gross misconduct because it has the tendency of affecting productive employment relationship."*

7.17 The grievor may have been out of the workplace, he was however at the place of the incident during his working hours. The grievor in line with the FSC Code of Conduct was still expected to at all times behave in a way that upholds the Values of FSC, and the integrity and good reputation of FSC. In addition, the complainant was a client of the employer. The grievor was fully aware that the complainant, Mr Singh, was a sugar cane farmer and a client of FSC. It was therefore obvious that the incident would have caused issues between the grievor's employer and the complainant. At the end of the day, the special good faith relationship is dependent on both, the worker and employer in their understanding of their respective obligations towards each other and this was expressly contained in the contract of service. In this matter, the employer did not arbitrarily terminate the grievor. There was a justifiable cause. Justice Laing in *Caudle v. Louisville Sales & Service Inc.*, 1999 SKOB 276 also explained as follows:-

*"Just cause is conduct on the part of the employee incompatible with his or her duties, conduct which goes to the root of the contract with the result that the employment relationship is too fractured to expect the employer to provide a second chance."*

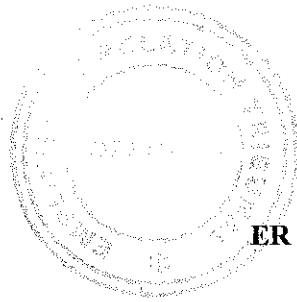
7.18 I therefore find that the employer was reasonable and fair in terminating the grievor after a proper investigation was conducted. In fact, he was interviewed and given an opportunity to respond therein. Right to hearing and mitigation was justified before he was found guilty of gross misconduct and this process was accorded although unwarranted due to the gravity of the misconduct.

7.18 Since I have found that the dismissal was lawful and fair the employee is not entitled to any remedy.

## 8.0 Determination

- 8.1 In the final analysis, I find that the grievor's dismissal was lawful and fair;
- 8.2 The grievor's claim for unfair dismissal is dismissed forthwith; and
- 8.3 Each party will bear their own costs.

Dated at Labasa this 27<sup>th</sup> day of February, 2025.



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Ms. SHANNON C TOUTOU  
ER TRIBUNAL MEMBER (NON-LEGAL)