

IN THE EMPLOYMENT RELATIONS TRIBUNAL

AT SUVA

ERT Grievance No 58 of 2024

BETWEEN: RAJESH KUMAR RAMJEE

GRIEVOR

**AND: FRESH CHOICE PTE LTD T/A FRESH CHOICE SUPERMARKET
& LIQUOR**

EMPLOYER

Appearance

*Ms. Prasad. N, with Mr. Ram. B for the Grievor
No appearance for the Employer*

Date of Hearing: 19 March, 2025

Date of Determination: 11 July, 2025

DETERMINATION OF THE EMPLOYMENT RELATIONS TRIBUNAL

Background to the Grievance

1. This grievance was registered with Ministry of Employment, Productivity and Workplace Relations on 4 July 2024. Mediation was attempted on 1 August 2024, 15 August 2024 and 22 August 2024 but was not successful. The Mediator referred the grievance to the Employment Relations Tribunal (or “the ERT”) on 26 August 2024 in accordance with s194 (5) of the Employment Relations Act (or “the Act”) outlining the nature of unsettled employment grievance with the following terms of reference:- **“Compensation ”**

Cause before the ERT

2. Both parties have filed preliminary submissions: the Employer on 7 November 2024, and the Grievor on 12 January 2025.
3. The matter was called for mention on several occasions. On 12 February 2025, I fixed the matter to 19 and 20 March 2025 for hearing and for NOAH to be served to the Employer given their non appearance. As per file notes, one Pallavi Raju, the HR Manager was informed via telephone notification on 14 March 2025 about the hearing dates. However,

on the date of the hearing, there was no appearance by or for the Employer. The matter was briefly stood down while the registry contacted Ms. Raju who said the hearing had “slipped their mind” as they are busy opening a new branch in Namaka. Consequently, the hearing proceeded at 10.15am, without the Employer.

4. The Grievor was the only witness. The following documents were adduced at the hearing:-

Exhibit 1: Letter of Employment to Bred Bank, dated 4 March 2011;

Exhibit 2: Advertisement dated 12 February 2024;

Exhibit 3: Application letter, dated 17 February 2024;

Exhibit 4: Letter of Termination of probationary Employment dated 23 May 2024.

Background Facts & the Claim

5. The Employer advertised a vacancy for a Shop Manager at its Savusavu branch. A Letter of Appointment dated 14th March 2011 was issued, appointing him as Branch Manager, starting on 29 February 2024. However, he was dismissed on 24 May 2024 - one week before his probation period ended.
6. On the day of his dismissal, he was at work when the Operations Manager called him at 9:30 p.m. and asked him to come to the branch. He said he would come after closing the shop. When he arrived at 10:10 p.m., he was handed a termination letter, which he signed and returned. He had never been terminated before and had not received any warning or prior notice. He felt there were no valid reasons given for his dismissal. It happened suddenly, and he was told to hand over everything. He was not provided with a laptop, vehicle, or mobile phone, and without a laptop or password, he couldn't do his job properly.
7. Grievor did not sign a contract. He was paid through bank deposit but has no bank statement or payslip. He was supposed to be paid \$20,000 but only received \$18,000. He faced problems at work and reported them to the Operations Manager, who ignored him. When he tried to contact Head Office, he was told by the Operations Manager to “just listen to me” because he had just started. HR did nothing. He now seeks compensation.
8. According to the Employer, Fresh Choice, (as per Submissions) the dismissal was justified for two reasons:
 - (a) They claim the termination was mutual, based on how it was accepted;
 - (b) They argue that since he was still in his probation period (3 months), and only one week short of completing it, the dismissal was reasonable.

9. Employer relies on the legal test from *Nale v Carpenters Fiji Ltd* [2012] FJET 3 at [61], saying the dismissal was fair because:
- (a) His family, who work for the company, had warned him;
 - (b) He was given proper training and supervision;
 - (c) He was dismissed due to poor performance; and
 - (d) He was given written reasons for his termination.

Issues

10. The Tribunal needs to determine the following issues:
- a) Whether the termination is lawful and/or fair as claimed by the Employer?
 - (b) If not, whether the Grievor is entitled to relief sought by him?

Analysis

A. Was the termination lawful

11. To decide if the plaintiff's termination was lawful, I must first determine whether there were valid reasons for ending his employment.
12. The termination letter reads:
- “I am writing to formally notify you that, after careful consideration, we have decided to terminate your probationary employment with fresh Choice Supermarket, effective immediately.*
- This decision has been made following a thorough review of your performance during the probation period. Despite the support and feedback provided, we have determined that the expected progress and improvements were not met...”*
13. Tribunal notes that the worker was dismissed during the probation period due to unsatisfactory performance – he did not meet the expected progress or improvements. The termination was carried out without notice.
14. However, even during a probation, employers are required to follow fair procedures when dismissing an employee. In *Pacific Counselling & Social Services v Sutherland* [2021] FJHC 103; ERCA 05 of 2015 (17 February 2021) the Court emphasized that proper assessment, documentation, and guidance must be provided before termination. This case highlights that probationary employees should receive clear expectations, regular feedback, and an opportunity to improve.

15. At paragraph 20 of the judgment, the Court stated, *“If there was good faith on the part of the Employer then there would have been a proper assessment of the worker. There would also be written reports on the target not met [Grievor] ought to know the areas where she was expected to improve and concentrate on.”*
16. The Employer asserts that the dismissal was fair, citing factors such as prior warnings (albeit from family members), adequate training and supervision, poor performance as the reason for termination, and the provision of written reasons. While I acknowledge that, on the face of their submission, these elements - if substantiated - could satisfy the requirements of procedural and substantive fairness, this matter proceeded as a formal proof due to the Employer’s non-appearance. As such, the Tribunal has not been presented with the necessary evidentiary material to verify the claims made in their submission. In the absence of this evidence, the Tribunal is unable to conclusively determine whether the dismissal met the legal threshold for fairness.
17. In addition, Tribunal must also consider whether Employer was entitled to terminate the Grievor without notice. In *Krishnee Krishna Naidu v Carpenters Fiji Limited (T/A Morris Hedstrom* ERT Grievance No.5 of 2012 (Judgment delivered on 3 January 2013), the Court acknowledged that-
- “45. It is useful to note that the language here provides the Employer a discretion as to whether or not the services of the Worker should be terminated. I can accept that discretion. What I believe is unlawful however, would be any reliance on the provision where it assumes that unsatisfactory performance would give rise to termination without notice.”*
18. The Court held that dismissing a worker without notice for unsatisfactory performance goes against section 33 of the Act. Under this provision, an employer can only dismiss a worker without notice in specific situations, such as:
- (a) gross misconduct;
 - (b) willful disobedience of lawful orders;
 - (c) lack of required skill or qualification;
 - (d) habitual or serious neglect of duties; or
 - (e) habitual absence from work without permission or a valid reason.
19. Since there was no contract to assist me in determining the notice period, I find it reasonable to award one month’s wages as reimbursement pursuant to section 230(1) (b) of the Act.

B. Was the execution of the dismissal fair?

20. In *Sheraton Fiji Resort v Naqali* [2021] FJHC 204; ERCA 03 of 2013 (22 October 2021) Wati J explained unfair termination as being –

“When it comes to unfair termination, the worker must establish that in dismissing him, the conduct of the Employer was such that it caused him humiliation, loss of dignity and injury to the feelings.”

21. Regarding the claim for unfair dismissal, there is no evidence that the termination caused the employee humiliation, emotional harm, or loss of dignity. Because of how the business operates, the Grievor’s role extended beyond normal office hours. The decision to give him the termination letter at 10:10 p.m. was based on practical reasons and his availability. He was contacted at 9:30 p.m. and chose to attend after finishing his duties, about 40 minutes later.

Decision and Orders

22. The Tribunal decides as follows:

- (i) The Employer must pay the Grievor one month’s wages, assessed as reasonable compensation in lieu of notice, within 21 days;
- (ii) The Employer must also pay \$300 in costs to the Grievor, within 21 days.



Ms. Mary Motofaga
Resident Magistrate

11 July, 2025

