

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

ORIGINAL JURISDICTION

CASE NUMBER: ERCC 06 of 2012

BETWEEN: **PRATISHNA NARAYAN LAL**

PLAINTIFF

AND: **CARPENTERS FIJI LIMITED** trading as **MORRIS HEDSTROM**

DEFENDANT

Appearances:

Mr. J. Bale for the Plaintiff.

Mr. S. Sharma and Mr. E. Narayan for the Defendant.

Date/Place of Judgment:

Friday 28 July 2023 at Suva.

Coram:

Hon. Madam Justice Anjala Wati.

JUDGMENT

A. Catchwords:

Employment Law – whether the worker was lawfully and fairly terminated from her work – did the employer have valid and justifiable reasons to terminate the worker – did it follow the procedure in terminating the worker – did it conduct itself in a manner which was not proper whilst carrying out the dismissal making it unfair – is the employer entitled to recover from the employee monies which it lost as a result of the worker’s misconduct.

B. Legislation:

- 1. Civil Evidence Act 2002: s.17.*
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Cause

1. The plaintiff Ms. Pratishna Narayan Lal ("*Pratishna*") was summarily dismissed from her employment on 26 April 2012 by her employer Carpenters Fiji Limited ("*CFL*"). She therefore brings this claim for compensation for unlawful and unfair dismissal.
2. The plaintiff had been working for CFL since 20 August 2002. At the time of her dismissal, she was a Supervisor Wholesale on a salary of \$19,000.00 per annum.
3. On 10 April 2012, she was suspended from work on allegations of fraudulent activity. Pratishna was advised that investigations will commence against her and that she would be advised of the specifics of the allegations once the investigation commences. She was informed that the matter will be investigated within 7 days and that she will be advised of the status of her employment. It was further noted in the suspension letter that she was not permitted to enter company premises or communicate with any of her Departmental Staff within the course of the investigation. She was also required to attend all interviews called for by the Internal Audit Manager.
4. Pratishna was called for interview twice, first on 21 April 2012 and the second on 23 April 2012. She attended both the interviews at the employer's premises. The interview was part of the investigation process.
5. Pratishna was then terminated from her work on 26 April 2012 for gross misconduct and substantial neglect of her duties. The specific allegations in the letter of termination was:
 - *Short banking by her in the sum of \$30,675.15*
 - *Confirmation by her that she had signed the cash collections register without counting the monies received.*
 - *Confirmation by her that she had processed the credit notes based on unknown and unacknowledged amendments.*
 - *Discovery in her possession (at her office table) a total of \$11,075.00 worth of stale cheques, although she had denied knowledge of the same.*

6. It is prudent that I set out the entire termination letter as it also identifies the process of the investigation:

"Dear Pratishna,

Re: Termination

As you are aware, the Company's Internal Audit team has been conducting an investigation of the Wholesale Department, following discovery of instances of short banking in the review of credit notes, raised by the Department ("discrepancies").

As the Wholesale Supervisor and the person responsible, you were interviewed by the Audit team on 21st April 2012, in relation to these discrepancies.

The discrepancies (and related irregularities) which were identified, put to you and duly acknowledged by you, in the course of investigation, included:

- *Short banking by you of the sum of \$30,675.15,*
- *Confirmation by you that you had signed the cash collections register **without counting the monies received,***
- *Confirmation by you that you had processed the credit notes based on **unknown and unacknowledged amendments,***
- *Discovery in your possession (your office table) of a total of \$11,675 worth of **stale cheques,** (although you denied knowledge of the same).*

Following conclusion of the Audit process, a meeting was convened on 23rd April 2012 with you by the management of the Company and at which the above irregularities and discrepancies were again put to you and you were accorded an opportunity to provide appropriate explanations and to respond.

At the meeting, you acknowledged and admitted the foregoing discrepancies, as established by the Audit team.

The company has very carefully considered the discrepancies and irregularities, the evidence in support including the findings of the Internal Audit team as made known to you, as well as taken into account your response and explanations given at the meetings.

The company has concluded that in all the circumstances and based on the foregoing reasons and particulars, you are guilty of gross misconduct and substantial neglect of your duties, as a Wholesale Supervisor.

Accordingly, and for the reasons set out herein, you are dismissed pursuant to Section 33(1) of the Employment relations Promulgation 2007.

Please ensure that all company assets in your care are to be handed over to the Head of Group Human Resources, this includes keys to the office, mobile phone and any other Company property.

You are also put on notice that the Company reserves all its rights in the matter including instituting such civil/criminal proceedings as it may be advised or deem appropriate.

Any salary or other benefits or entitlements due to you will be paid to you (less lawful deductions) in the usual way.

We thank you for your services to the Company and wish you well in your future endeavors.”

7. I must also reflect that the plaintiff was charged for 7 counts of theft contrary to section 291(1) of the Crimes Decree No. 44 of 2009. After a trial, she was convicted for all counts and sentenced to 30 months imprisonment for each count to run concurrently with a non-parole period of 20 months. The invoices on which she had been found guilty of stealing were invoice numbers 4725, 4908, 5416, 5511, 17467, 17587 and 17952.
8. The claim for unlawful and unfair dismissal was robustly contested. The defendant has also raised a counter-claim against the plaintiff.

Defence and Counter Claim

9. The defendant says that the plaintiff was terminated for cause as identified in the letter of termination and thus the termination was lawful. It refutes the claim for unfair dismissal. The employer says that Pratishna had caused losses to the employer by:

- i. *Short banking a sum of \$30,675.15 between the period of 31 October 2011 to 20 December 2011 and had fraudulently, and/or wrongfully and/or negligently passed credit notes totaling to the sum of \$30,675.15.*
- ii. *Having in her possession stale cheques totaling \$11,675.00.*
- iii. *Short banking a sum of \$63,259.34 between the period 23rd June 2010 to 5 December 2011 and had fraudulently and/or wrongfully and/or negligently passed credit notes totaling to the sum of \$63,259.34.*

10. The defendant thus claims the above sums of monies from the defendant in its counter-claim.

Issues

11. The issue before the Court is whether Pratishna was unlawfully and unfairly dismissed from her employment.
12. To determine whether Pratishna was lawfully terminated from her work I will have to examine whether the reasons for her termination was justified. If it was then her termination would be substantially lawful. I will also have to look at whether the procedure involved to terminate her was as per the procedure required by law for summary dismissal cases. If the procedure was correctly followed then the termination will be procedurally justified.
13. To see if the termination was fair, I will have to examine the manner in which Pratishna's dismissal was carried out. To that end I will have to examine the conduct of the employer in carrying out the dismissal. If the conduct was such that it caused Pratishna humiliation, loss of dignity and injury to her feelings then the termination is unfair. It will not be unfair dismissal if the employee suffers humiliation, loss of dignity and injury to her feelings arising from the fact of the dismissal.

Evidence, Law and Analysis

14. I will first of all address the issue of unlawful dismissal. Let me examine the reasons for the termination.

A. Unlawful Dismissal

(i) Were the Reasons for the Termination Justified?

15. I have gone through the entire evidence of the parties on the allegations. I find that the employer has established the allegation of short banking, signing cash register for receiving monies without counting for the same and processing credit notes of unknown and unacknowledged amendments. The final allegation of having stale cheques in her possession was not pursued by the employer and I find that it was not established.

16. Before I go into my findings, I wish to reflect on s. 17 of the Civil Evidence Act as Pratishna was convicted for stealing from the employer. She is deemed to have committed the offence. However, I will go through the evidence and rely on own findings notwithstanding the operation of s. 17. If I do not find that I am satisfied that she has committed the offence in respect of any particular transaction, I will not let the conviction affect my findings.

17. Section 17 of the Civil Evidence Act 2002 reads:

“17(1) In any civil proceedings the fact that a person has been convicted of an offence by or before any court in Fiji or elsewhere is, subject to subsection (3), admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that the person committed the offence, whether the person was so convicted upon a plea of guilty or otherwise and whether or not the person is a party to the civil proceedings.

(2) No conviction other than a subsisting one is admissible in evidence by virtue of this section.

(3) In any civil proceedings in which by virtue of this section a person is proved to have been convicted of an offence by or before any court in Fiji –

(a) the person is taken to have committed that offence unless the contrary is proved; and

- (b) *without affecting the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based, the contents of any document which is admissible as evidence of the conviction, and the contents of the information, complaint, indictment or charge-sheet on which the person was convicted, are admissible in evidence for that purpose.*
- (4) *Nothing in this section affects the operation of section 19 of this Act or any other written law whereby a conviction or a finding of fact in any criminal proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.*
- (5) *If in any civil proceedings the contents of any document are admissible in evidence by virtue of subsection (3), a copy of that document or of the material part of it, purporting to be certified or otherwise authenticated by or on behalf of the court or authority having custody of that document, is admissible in evidence and must be taken to be a true copy of that document or part unless the contrary is shown."*

18. I was informed by Pratishna during the trial that she has appealed her conviction. I am not made aware of any appeal that has set aside the judgment of the primary court convicting Pratishna of 7 counts of theft. However, like I said before, I will rely on my own findings to determine Pratishna's claim.

19. The cash register collection book for 29 December 2011 shows that Pratishna collected a sum of \$8,260.00 on an invoice number 5511. The customer in respect of that invoice was Minen Mini Mart. She signed the cash register book and acknowledged receipt of the sum of \$8,260.00. Then Pratishna prepares Interim /Final Cash Summary for banking and the amount that is banked is only \$6,195.00 for invoice number 5511 when Pratishna had signed for collecting \$8,260.00. The evidence then shows that a credit note in the sum of \$2,065.00 is raised and the difference is made up.

20. The branch load summary for invoice 5511 shows the goods were delivered for a sum of \$8,260.00 and received for the same amount too.

21. When questioned why she received a sum of \$8,260.00 and made a cash summary of \$6,195.00 for banking, Pratishna answered that salesmen receive money on the delivery copy and the delivery copy says that a sum of \$6,195.00 was received. She admitted that she was wrong to have signed for receiving \$8,260.00 without counting the monies.
22. The delivery copy of the invoice shows that the sales representative had to collect \$8,260.00 in cash or cheque. It also shows that salesman had collected \$6,195.00 on 20 December 2012. The delivery note also shows that 50 cartons were not supplied. When the branch load summary says that goods to the full value was supplied, how did then the shortfall of 50 cartons occur?
23. It is very clear that the delivery note noting that the salesmen had collected \$6,195.00 on 20 December 2012, is tempered by Pratishna. She writes in the cash register on 29 December 2011 that received a sum of \$8,260.00 and prepares the bank summary for \$6,195.00 the same day. She stole the sum of \$2065 and then to balance the sale, she writes in the delivery copy that only a sum of \$6195 was collected and 50 cartons were not supplied. She balances the sale by preparing the credit note which was not authorized as she did not get clarification as to who wrote that 50 cartons were not supplied when the branch load summary says that all the goods to the value of the invoice was supplied. I find that it was Pratishna who had amended the delivery note to cover up her theft.
24. If Pratishna has not stolen the balance monies, which I believe she has, then at least she is wholly negligent in signing for having received the sum of \$8,260.00 without counting, for which she must take responsibility. I am of the view that Pratishna would just not sign for receiving the money without counting for the same and that she has actually stolen the balance cash and manipulated the delivery note to show that only a sum of \$6,195.00 was received.
25. Many other invoices follow the same pattern. I will briefly reflect on these invoices. The second invoice is respect of which I find that Ms. Pratishna had stolen from the employer is invoice 4725. She signed the cash register book for having received the sum of \$7,600.00 but she only prepared the banking for \$3,800.00. She stole the difference of \$3,800.

26. The third invoice is 5416. The value of the invoice is \$5,805.00. The cash register shows that Pratihna received \$5,805.00 but banked only a sum of \$3,670.00. The branch load summary shows that goods worth of \$5,805.00 were loaded and sent. A credit note of \$1,935.00 was raised. I do not believe that Pratihna would be so lax in signing for receiving large amounts of money and not counting it. I firmly believe that she had stolen the monies.
27. The invoice 4908 shows that the value of the invoice is \$11,400.00. The branch load summary shows that goods worth of \$11,400.00 was supplied. The amount banked was \$5,700.00. I do not find that there is any evidence of Pratihna collecting \$11,400.00 and not banking the same amount. The employer failed to produce any documents to suggest that this amount of \$11,400.00 was given to Pratihna. The cash register shows that different people were receiving cash apart from Pratihna. If Pratihna had collected this amount of money then surely she will sign for it like she did on other occasions. I therefore do not find that the employer could establish theft on this invoice.
28. The employer also alleged discrepancy in relation to invoice number 17952 for a value of \$3,954.00. It is alleged that a sum of \$3,850.00 was signed for by Pratihna as having received the cash and that she only prepared cash summary for banking for only \$1,952.00. I find that the balance of \$1898.00 was stolen by Pratihna.
29. The invoice 5570 shows a value of \$79,390.00. There is also a credit note for this invoice in the sum of \$73,503.00 which means that this sum of goods was not supplied. In respect of this invoice Pratihna has signed as receiving a sum of \$5,925.00. There is no evidence to show that Pratihna did not bank the amount that she received. There is no evidence of cash summary book to show that this amount was not banked.
30. On the invoice number 4651, the amount of monies received is \$5,876.50. It shows that Pratihna received that money. She denies that it is her signature. She banked only a sum of \$2764.90. I have no doubts that once again Pratihna received these monies and failed to bank the entire amount. The shortfall in the sum of \$3111.60 was stolen by Pratihna.

31. The other invoice is 17467 in respect of which Pratishna collected a sum of \$5775 and banked only \$3849.00. The balance sum of \$1926.00 was stolen by Pratishna.
32. In respect of all the short falls, Pratishna raises a credit note to make for the difference to balance the invoice amount. The credit notes are based on amended invoices for short supply of goods to the customers when the branch load summary shows that goods to that value has been sent to the customers.
33. The amended invoices do not show who amended the invoices. Pratishna should have then clarified as to who amended the invoices as the amendments needed to be verified by the Warehouse Security or Manager who knew whether there was short supply of goods.
34. The evidence is very clear that it is Pratishna who amended the invoices because she has signed for receiving the money and to show that less amount of money was received than the amount she signed for, she amended the invoice and raised credit notes to balance the invoice.
35. Pratishna had very carefully devised a plan to make money for herself as she knew that so many people are involved in one transaction starting from salesmen to warehouse to her department staff. She was hoping that the blame will not come to her.
36. I find that stealing is gross misconduct and that Pratishna's conduct as an employee was so adverse that the employer had justified reasons to terminate her from the employment summarily.

ii. Procedure for Dismissal

37. This was a case for summary dismissal and all that the employer had to do was to provide to the employee written reasons for dismissal, up to date pay and a certificate of service. There is no evidence led by Pratishna that the above statutory procedures were not complied with.
38. I find that the termination was lawful both substantially and procedurally.
39. I will now turn to the question of unfair dismissal. I will very briefly reflect on why Pratishna claims that she was unfairly dismissed from her employment.

B. Unfair Termination

40. Pratishna's evidence on unfair termination was that the employer's conduct in terminating her was not proper and that it caused her humiliation, loss of dignity and injury to her feelings.
41. She started off by indicating how she was treated when she was suspended. She said that when she was handed the suspension letter by the Human Resources Manager Mr. Pawan Sharma, she was escorted out of the office by the Security Manager. He first escorted her to her office where she cleared her office. She cleared everything and gave the employer's assets back to it. The Security Manager again escorted her out of the office.
42. When this happened, she testified that it was early morning. A lot of people were in the office including sales staff, OHS staff, delivery staff, security, advertising staff, receptionist and suppliers waiting for a meeting. She knew all of them since she had worked there for 10 years. She testified that she really felt very bad and was heartbroken. That was a very terrible day for her and the worst day of her life.
43. Pratishna also testified that in the second interview on 23rd April 2012, when the allegations were being investigated, she was treated very badly. She said that when she sat down for the interview, they all stared at her as if she did something terribly wrong. Then the interview team started passing invoices amongst themselves and asked her questions. They would not let her finish her explanation. She needed time to see the documents as they were not from her department.
44. She informed that when she looked at the second invoice, Daniel Whippy, sitting on the left stood up and pulled the invoice from her hand. Beside Daniel Whippy was the Audit Manager, he flicked the invoices to her. She said that when she explained the credit note then Daniel Whippy smiled and said that *"just admit that you have done that and that you are a thief"*.
45. Pratishna said she questioned Daniel how could he say that and not allow her to speak. Daniel Whippy then said to her just imagine what will happen if you do not admit. Pratishna said

that she kept asking for a chance to speak and they would not let her but they just threw invoices, laughed and mocked at her.

46. Pratishna said that in the interview they also accused her of having an affair and buying gifts for a particular manager. She said that when she tried to explain they laughed and said for her to have some respect for her husband and asked her what if he did the same to her. They started addressing her personal life and laughed at her. Pratishna said that her first interview on 21st April 2012, was smooth and nice.
47. She also testified how she was humiliated when she was given her termination letter by Mr. Pawan Sharma. Pawan Sharma asked one HR Officer Alvina Pillay to pass the termination letter to her when she was called to the office on 26th April 2012.
48. Alvina Pillay did not pass the letter as it was her birthday so Pawan Sharma passed the letter and said to her "*Oh, it is your birthday. Happy Birthday. Best of luck*". Pratishna said that he laughed at her and said best of luck in your future. She felt sad. She felt very bad too.
49. Pratishna also testified that there were so many publications in the Fiji Sun and Fiji Times about her no longer being employed by CFL. Fiji Sun had two publications. One on 28th April 2012 and the other one on 10th May 2012. In the second publication on 10th May 2012, her photo was beside her husband Sanjay Lal's photo. Sanjay Lal also worked for CFL and was terminated too. He was terminated on 7th May 2012.
50. The Fiji Times publication was on 10th May 2012 and 11th May 2012. The second publication in the Fiji Times also had her husband's photo on top of hers indicating that he was no longer employed.
51. She testified that there was no need for so many publications and that there was no need to put her pictures together with her husband's. She said that her family members questioned her after her picture was in the papers. Her son questioned her too. Her son asked her why her pictures were in the papers so many times. People made up their mind that she was a thief.

52. I found Pratishna to be exaggerating how she was affected by the process of suspension, interview and termination. I must not overlook that the employer in this case was dealing with shortfall of monies and Pratishna was the prime suspect. They had to be careful and tactful to ensure that Pratishna did not destroy any evidence, that clear answers were extracted from her in the interview to get to the bottom of the allegations and that she did not conduct anymore dealings with its customers.
53. The security officer accompanying Pratishna out of the office was to ensure that she did not destroy any office documents, temper with the evidence and manipulate any other form of evidence. This was CFL's normal exit procedure and there was nothing untoward about it. She was not humiliated by any staff or the employer. Even Pratishna admitted to this in her evidence.
54. The interview process may have been robust but I accept the evidence of Mr. Pawan Sharma that no one humiliated Pratishna or caused her any grief. No one flicked or snatched invoices from her. She was shown the invoices and she answered all the questions.
55. I find that Pratishna is concocting how she was treated at the interview to gain sympathy. She did not like the robust process but she could not expect anyone in the panel to be welcoming as the process required determination of where the employer's money has gone. Her interview questions and answers are so clear and stern. It does not appear that she was threatened or pressured in any way. She answered the questions defensively and smartly to avoid any liability. It does not appear to be that she was derailed or humiliated by the robustness of the process. I find that she was humiliated because her theft was clearly discovered by the employer. She did not like that.
56. I also accept the evidence of Mr. Pawan Sharma that the interview process was work related. In the course of the process, there were no personal attacks as alleged by Pratishna. She may have been informed that they find her to be the thief but I find that was part of the process of extracting information from her. This interview was not made public and the robustness of the process was fair and warranted given such huge discrepancies under the hands of Pratishna.

57. I also accept the evidence of Pawan Sharma that when he handed the letter to Pratishna, it was she who then said that it was her birthday and his natural response was to wish her. He meant no malice or had no motive to hurt her. He also testified, which I accept, that it was him all the time who was supposed to deliver the letter to Pratishna and not any other staff.
58. The publications in the Fiji Sun and Fiji Times about her no longer being employed by the employer is not a process to humiliate her but to protect its interest from further liability. Pratishna was dealing with the customers and in order to avoid any further losses the employer had to take the step to publish the information in the papers. Her husband's photo beside her is an unintentional act and something that the newspaper chose to do. I do not find that the employer gave any instructions to publish their unemployment status with CFL side by side.
59. I do not find that Ms. Pratishna was unfairly terminated from work.

C. Counter Claim

60. It is my finding that Pratishna has caused loss and damage to the employer in terms of monetary shortfall in banking. It is only proper that she makes good the loss that she caused the employer. It would be otherwise unfair that she be allowed to be unjustly enriched with the employer's money when she was paid a salary to perform the work. She did not work for the employer's benefit but for her benefit after being paid the full salary.
61. The total amount of loss that I find that has been caused to the employer on the evidence before me is in the sum of \$14, 735.60. The amount is made up of the shortfalls on the following invoices:

<i>Invoice Number</i>	<i>Shortfall in Banking</i>
5511	\$2065
4725	\$3800
5416	\$1935
4651	\$3111.60
17467	\$1926
17952	\$1898

62. I find that it is only fair that these sums of monies be paid to the employer with interest at the rate of 6 percent. CFL is a commercial entity. It invests its money and gets returns on its monies. If these monies were not stolen, it would have been usefully applied somewhere else for the growth of the business. The monies were stolen in 2011 to 2012. It took 5 years before the trial was concluded. I find that interest for 5 years at the rate of 6 percent ought to be paid to the employer. I calculate the interest to be \$3,536.44:

$$6/100 \times 14,735.60 = \$884.14 \text{ (annually)}$$

$$\$884.14 \times 5 = \$4,420.70 \text{ (for 5 years)}$$

63. The total amount of damages inclusive of interest is \$19,156.30

D. Costs

64. This is a claim which should not have been filed by Pratishna. It is my view that she knew that she had committed gross misconduct against the employer and has incurred loss to her employer.

65. She proceeded to bring this case incurring more costs to the employer. It has incurred lot of costs for hiring counsel and reproducing invoices in court to establish the evidence. The hearing took long as well because the counsel for the employer had to establish theft in each invoice. I find that cost on a higher scale is justified.

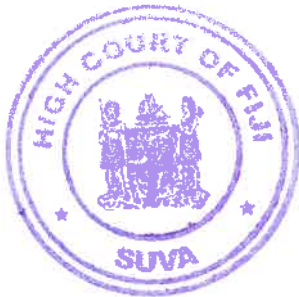
Final Orders

1. In the final analysis, I make the following orders:

(a) I dismiss the plaintiff's claim for unlawful and unfair termination.

(b) I allow the employer's counter-claim in the sum of \$19, 156.30 with interests. There shall be judgment against the plaintiff in the sum of \$19, 156.30 in favour of the employer against the plaintiff.

(c) I also orders costs against the plaintiff in favour of the employer in the sum of \$6,500.



Hon. Madam Justice Anjala Wati

Judge

28.07.2023

To:

- 1. Jackson Bale Lawyers Suva for the Plaintiff.**
- 2. Patel Sharma Lawyers for the Defendant.**
- 3. File: Suva ERCC 06 of 2012.**