

IN THE EMPLOYMENT RELATIONS COURT
AT SUVA

ERCC No. 16 of 2017

BETWEEN : **NEERAJ PRASAD**

PLAINTIFF

AND : **FIJI NATIONAL PROVIDENT FUND**

DEFENDANT

BEFORE : **M. Javed Mansoor, J**

COUNSEL : **Mr. A. Chand with Ms. S. Nand for the Plaintiff**
Ms. L. Seibouma with Mr. S. Ligani for the Defendant

Date of Hearing : **25 & 26 February 2020**

Date of Judgment : **21 August 2023**

JUDGMENT

EMPLOYMENT LAW *Dismissal – Procedural defects in disciplinary hearing –
Whether employer acted in breach of contract – Jurisdiction of the court – Section 211
Employment Relations Act 2007*

1. The plaintiff commenced employment with the defendant as an inspector in 2003 and was later made a customer service officer. His employment was terminated on 29 April 2016. He filed this action in August 2017, seeking reinstatement to his former position and reimbursement of salary and other entitlements, together with damages. His services were terminated on allegations of sexual harassment of another employee of the defendant, a superannuation fund.
2. In his statement of claim, the plaintiff stated that his employment was suspended by a letter delivered to him on 26 January 2016. The plaintiff stated that the defendant was in breach of agreement in the way his disciplinary proceeding was conducted and gave particulars of breach.
3. These included the failure to inform the plaintiff of the investigation conducted on 27 January 2016. He stated he was not allowed outside legal representation, not provided with necessary documents and that the internal inquiry did not comply with the defendant's human resource policy timelines. He stated that the defendant's actions caused him and his family humiliation and distress.
4. The defendant denied the plaintiff's claims. In its statement of defence, the defendant stated that the plaintiff was informed that the ethical standards officer would be travelling to Labasa to conduct preliminary investigations from 27 January 2016. However, on the day investigations began in Labasa, the plaintiff had arrived at the defendant's head office in Suva to meet the general manager, human resources. The defendant stated that the details concerning the allegations against him were forwarded to the plaintiff, and that due process was followed in instituting disciplinary action against him.
5. In reply, the plaintiff denied the defendant's assertions and reiterated what was stated in the statement of claim.

6. The matter proceeded to trial on 24 issues. These need not be reproduced. The main question this court will examine is whether the termination was proper, and if not so, whether the plaintiff is entitled to damages. A number of issues raised by the parties are irrelevant and not within the ambit of this proceeding.
7. There is no dispute on the following. In April 2010, the plaintiff was instructed by the branch manager to join the customer services section as a customer service officer. The plaintiff was issued with a suspension letter – erroneously dated 25 January 2015 – and delivered to him on 26 January 2016. Preliminary investigations into the matter began in Labasa on 27 January 2016.
8. After the preliminary investigation, the defendant sent the plaintiff letter dated 11 February 2016 containing 7 allegations. These are:
 - a. “That you have breached the FNPF HR Policy by displaying unwelcome sexual actions and verbal remarks by asking for sexual favors from Fiji National Provident Fund Attache, Ms Archana Devi based at the Labasa Agency on various occasions with the recent report on 22nd January, 2016;
 - b. That you have breached the FNPF HR Policy by making malicious and derogatory statements towards FNPF attaché, Ms Archana Devi on various occasions;
 - c. That you have breached the FNPF HR Policy through your actions displaying rude and discourteous treatment towards your work colleagues based at the Labasa Agency be demeaning FNPF staff based at Labasa Agency;
 - d. That you have breached the FNPF High Level Information Security Policy when you sent out an email without authorization from the account of Ms Archana Devi on 26th November, 2015;
 - e. That you have breached the FNPF HR Policy by reporting late to work on several occasions as reflected in the daily attendance register;
 - f. That you have breached the FNPF HR Policy by brining drugs into the office premises and/or being under the influence of drugs on the FNPF premises;
 - g. That you have breached the FNPF HR Policy by failing to cooperate with the investigation process whereby you refuse to attend the preliminary interview with Ethical Standards Officer pertaining to the allegations constituting to your suspension on 25th January, 2016, despite prior notification from Team Leader Customer Service, Labasa Agency.”

9. The plaintiff responded to the allegations on the same day. He denied all the allegations with explanations except the one concerning sexual harassment. The plaintiff also expressed dissatisfaction concerning the handing over of the suspension letter in his sick mother's presence.
10. In his evidence, the plaintiff explained that he did not respond to the allegation concerning the sexual harassment of a worker because the allegation letter was dated 25 January 2015, and that the employee concerned – who was in an attachment role – was not in employment in 2015.
11. The defendant did not accept the plaintiff's explanations and a disciplinary inquiry was constituted in terms of the employer's human resource policy. The plaintiff attended the disciplinary hearing on 15 April 2016. The inquiry panel was chaired by the general manager human resources, the internal auditor and a legal officer.
12. The plaintiff said that his request for legal representation at the inquiry at his cost in terms of clause 13.3.2 (b) (i) and (ii) of the disciplinary policy was not allowed. He was allowed an internal representative. However, he represented himself at the internal hearing.
13. At the internal inquiry, he said he was not allowed to be present when the main witness was interviewed. He alleged that this witness was coerced to change her initial statement, and that this was done to his detriment.
14. After inquiry, the internal tribunal found the plaintiff guilty of the charge of sexual harassment. However, he was found not guilty of the other charges against him. The plaintiff's services were terminated on 29 April 2016.
15. The plaintiff told court that the manner in which the plaintiff's mother was handed over the suspension letter caused the plaintiff particular grief, especially, as she was ill. The plaintiff said that two of his colleagues, the team leader, Ms. Mereseini Tukania and a clerical officer, Filipe, had taken the suspension letter on the morning of 26 January 2016 to his mother's residence instead of his usual place of residence. His mother lived about four kilo meters from his residence. The open letter was given to him in the presence of his mother, and informed him that it was his suspension letter. This was despite him telling the team leader

that he would collect the suspension letter from office, as he did not want to upset his mother. When he went to office, he said, he was not allowed to enter the premises. The team leader had told him, he said, that this was on instructions by the management.

16. The plaintiff lodged an appeal dated 2 May 2016 to the defendant's chief executive officer after he received the termination letter. The defendant responded by letter dated 12 May 2016 that its decision would stand. The plaintiff wrote a second appeal to the defendant's chairman on 24 May 2016 to which there was no response. Thereupon, he sought advice from the ministry of employment and industrial relations to file an employment grievance. He told the tribunal that the ministry advised him to complete the internal inquiry process. Thereupon, he wrote a second letter to the defendant's chairman, which was also not replied.
17. The plaintiff stated that defendant reported him to police accusing him of sexually harassing another employee several months after the allegation was made. A certificate of court proceedings issued by the Labasa Magistrates Court on 24 April 2017, states that the action against the plaintiff was dismissed and the accused was discharged on the application of the prosecution.
18. The plaintiff said that the defendant's actions caused him humiliation and pain of mind. He said that the termination of his employment has adversely affected his employment prospects with other organisations.
19. The defendant's general manager, human resources, Mr. Ravinesh Krishna, in his evidence said that the defendant's employment was suspended in order to investigate the complaints against him. The investigation was referred to an ethical standards officer. The witness said, after a hearing, the internal tribunal concluded that the plaintiff was guilty of sexually harassing another worker employed by the defendant. The tribunal determined he was not guilty of the other charges. The defendant's evidence need not be gone into extensively in the context of this case.

Conclusion

20. The plaintiff's statement of claim alleged breach of agreement/ breach of the defendant's human resources policy and acts constituting unfairness in the

investigation and disciplinary process, and the subsequent termination of his employment.

21. The plaintiff does not say which provision of the contract of employment was violated by the defendant.
22. The matters set out in the statement of claim mainly related to the defendant's alleged acts of unfairness in suspending him and conducting the disciplinary hearing. The plaintiff gave extensive evidence on these matters. He also referred to these in his reply to the defendant's letter of 11 February 2016, which set out the allegations against him. These matters, however, do not relate to the breach of his employment contract.
23. In the circumstances, the defendant did not act in breach of the plaintiff's contract of employment.
24. The matters concerning unfair termination have to be raised as an employment grievance according to section 211 of the Employment Relations Act 2007. The employment grievance must be first lodged with mediation services of the Ministry of Employment, Productivity and Industrial Relations. In the case of a worker in an essential national industry, the grievance must be filed within 21 days in terms of section 188 (4) of the Employment Relations Act.
25. Where there is no settlement of the grievance, the mediator will refer the matter to the Employment Relations Tribunal. Section 211 (1) (a) of the Act expressly confers jurisdiction on the Employment Relations Tribunal to adjudicate on an employment grievance. No such jurisdiction is conferred on this court.
26. No objection was raised concerning the court's jurisdiction to hear this action. The defendant also did not file written submissions.
27. The plaintiff's employment was terminated on 29 April 2016. Initially, he attempted to file an employment grievance. He did not proceed to do so. The plaintiff also seems to have known that an employment grievance should be filed within a 21 day period in respect of essential national industries. He stated in his evidence that the defendant falls within the category of an essential national industry. This action was filed on 15 August 2017, about 15 months after the

termination of the plaintiff's employment. The court cannot adjudicate upon a matter on which it has no jurisdiction.

28. The plaintiff's action is dismissed.

ORDER

- A. The plaintiff's action is dismissed.
- B. The parties will bear their own costs.

Delivered at **Suva** on this **21st** day of **August, 2023**.



M. Javed Mansoor
Judge