

**IN THE EMPLOYMENT RELATIONS COURT**  
**AT SUVA**  
**APPELLATE JURISDICTION**

ERCA 12 of 2020

**BETWEEN** : FIJI NATIONAL UNIVERSITY

**APPELLANT**

**AND** : AISAKE BULUWALE

**RESPONDENT**

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

**COUNSEL** : Mr. R. Chand with Mr. R. Prasad for the Appellant  
Ms. M. Rabele for the Respondent

**Date of Hearing** : 9 August, 2023

**Date of Judgment** : 1 February 2024

# JUDGMENT

EMPLOYMENT  
*should intervene*

*Dismissal – Misconduct – Whether appellate court*

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1. The respondent was dismissed for issuing a false and unauthorised reference to another employee. He filed an employment grievance alleging unfair and unlawful termination of employment. After hearing both parties, the resident magistrate, by decision dated 24 July 2020, concluded that the worker's dismissal was unlawful and ordered the employer to pay the equivalent of 12 months wages without the loss of benefits. The employer was also ordered to pay \$1,000.00 to the worker for failing to provide a certificate of service at the time of dismissal. This appeal is from that decision.
2. The appeal is based on the grounds that the employee admitted his misconduct during the hearing and that the resident magistrate erred in holding that the employer should have led the evidence of the manager audit. The appellant claims that the magistrate erred in awarding the respondent twelve months wages as damages for unlawful termination when there was no evidence to support or justify the finding that he had suffered losses equivalent to wages of twelve months.
3. The letter of dismissal issued to the respondent states that while he was the properties officer, he wrote a reference for Maikeli Tokaibureqa Naikawakawavesi that was factually incorrect and misleading. The respondent is alleged to have described Mr. Naikawakawavesi as a plumber when in fact he was an assistant plumber. The reference was purported to have been issued on behalf of the appellant's director properties and facilities. The respondent's employment was summarily terminated with effect from 7 September 2016.
4. Pritika Ram, the appellant's manager, people performance and development gave evidence for the employer in the tribunal. She stated that the dismissal was in line with the university's human resource policy and that the worker was

given an opportunity to be heard. The university's recommendation to dismiss the worker was approved by the vice chancellor.

5. The respondent's evidence is that he was asked to provide the reference letter by the university's manager audit for his son, Maikeli. He claimed that the responsibilities to be included in Maikeli's reference were given by the manager audit.
6. The tribunal states that although the employer was aware of the respondent's claim that the request to issue the reference was made by the manager audit, there is no evidence that a statement was taken from him during investigations. The tribunal notes that the respondent did not deny providing a reference and that he did so at the request of the manager audit. The complaint against the respondent concerning the reference was made by the manager audit.
7. The tribunal was of the view that the audit manager's testimony would have been helpful to clear several matters, especially as the worker claimed that he acted on the instructions of the audit manager. The tribunal concluded that on a balance of probabilities, the employer failed to establish that the conduct of the worker amounted to gross misconduct.
8. The appellant submits that the tribunal erred in saying that the audit manager's evidence should have been led. The respondent admitted having issued the reference, but explained that it was done on the instructions of the audit manager. He said that Maikeli performed the work of a plumber, and that he was the only plumber engaged by the university. The appellant's witness was unable to confirm or deny this assertion.
9. The respondent issued the false reference to assist the audit manager's son, Maikeli. The reference is said to be false because Maikeli is referred to as a plumber, when his appointment was as an assistant plumber. Given the facts of the case, the resident magistrate was not unreasonable in observing that the audit manager's testimony would have been most useful in adjudicating the grievance. In the absence of his testimony, and considering the context in which

the reference is alleged to have been issued, the tribunal was not convinced that the dismissal was just.

10. The resident magistrate came to this conclusion after hearing the witnesses, and was in an apt position to make the necessary findings of facts based on the evidence. The quantum of compensation was influenced by the fact the respondent was not given a certificate of service at the time of dismissal on 7 September 2016. The tribunal's finding is that the certificate was not given until 6 June 2019. The appellant has not shown a cogent basis upon which to interfere with the resident magistrate's findings and conclusion.

**ORDER**

- A. The appeal is dismissed.
- B. The appellant is to pay the respondent costs summarily assessed in the sum of \$1,000.00.

Delivered at **Suva** this **1<sup>st</sup>** day of **February, 2024**.



M. Javed Mansoor  
Judge