

IN THE EMPLOYMENT RELATIONS COURT
HIGH COURT OF FIJI
AT LAUTOKA

CASE ACTION NO. ERCC 03 OF 2019

BETWEEN: **AMINESH NITESH KUMAR**

APPELLANT

A N D: **SHANGRI-LAS FIJIAN RESORT**

RESPONDENT

Appearances: Mr. Daveta F. and Ms. K. Chand for the Applicant.
 Mr. Krishna S. and Ms. Prasad for the Respondent.

Date of Hearing: 29 November 2023

Date of Ruling: 18 December 2025

J U D G M E N T

INTRODUCTION

1. This is my judgement following a one-day trial of this matter. The following witnesses gave evidence:

Aminesh Nitesh Kumar (“Kumar”)	PW1
Francis Lee (General Manager – Shangri-La)	DW1
Ashwini Mohini	DW2

2. Kumar claims that he was constructively dismissed from employment. He seeks the following Orders:
 - (i) a Declaration that his non-employment was due to constructive dismissal.
 - (ii) an Order that he be paid loss of earnings from 06 March 2018 until the decision of this Court.
 - (iii) an Order for compensation for loss of future earnings as he was willing to continue with his employment.
 - (iv) an Order for compensation due to humiliation, anxiety and loss of dignity pursuant to section 230 of the Employment Act 2007.
 - (v) General Damages.
 - (vi) interest on any damages awarded from the date of redundancy.
 - (vii) FNPF on any award.
 - (viii) interest on the judgement sum.
 - (ix) costs on an indemnity basis.

BACKGROUND

3. Kumar commenced employment with the Shangri-La Fijian Resort ("**the Shangri-La**") in 2002. Over the following years, he advanced steadily through the organization. On 1 April 2008, he was appointed to the position of Service Manager, Purchasing. He served in that capacity for approximately a decade until 06 March 2018, when he formally tendered an undated letter of resignation.
4. Kumar's resignation was accepted by the *Shangri-La* on the following day. The letter dated 7 March 2018 was issued under the hand of the Human Resources Manager.
5. On 22 May 2019, approximately fourteen (14) months later, Kumar filed a Writ of Summons and statement of claim in the Employment Division of the High Court. The *Shangri-La* filed its statement of defence on 6 June 2019, and Kumar filed his reply on 16 July 2019.
6. Order in Terms of Summons for Directions was granted by Mansoor J. on 17 March 2020. Kumar filed his Affidavit Verifying List of Documents on 05 August 2020. The *Shangri-La* filed its AVLD on 16 September 2020. Pre-Trial Conference was held on 22 February 2022 followed by Copy Pleadings on 04 March 2022. Messrs. Pillai Naidu & Associates filed *Summons to Enter Action for Trial* on 04 March 2022. The *Shangri-La*

however filed a Supplementary List of Documents on 15 June 2023 and the matter was heard on 29 November 2023.

KUMAR'S CLAIM

7. He pleads that on 05 March 2018, he was informed that a directive had been received from the *Shangri-La's* Head Office in Hong Kong indicating that his services were no longer required.
8. However, at trial, no evidence was led on this allegation, let alone, as to the source of that allegation.
9. The next day, on 06 March 2018, Kumar reported for duty as usual. Later that afternoon, he was called to the General Manager's office, where he found his immediate supervisor, the Financial Controller, Mr. Vidya Nathan, present with the General Manager (**DW1**). After exchanging brief pleasantries, the **DW1** produced a pre-typed resignation letter and instructed him to sign it.
10. Kumar asserts that he informed **DW1** that he would rather resign than acknowledge the termination letter. **DW1** agreed and directed him to write and sign a resignation letter immediately. Kumar says he then requested permission to return to his office to retrieve a *pro-forma* resignation letter which he kept there. However, the General Manager refused the request. Kumar remained in the General Manager's office, where he was told that unless he wrote and signed a resignation letter on the spot and tendered it forthwith, the *Shangri-La* would proceed to terminate his employment.
11. According to Kumar, that is precisely what followed: he typed a resignation letter in the presence of his immediate supervisor in **DW1's** office, signed it, and tendered it on the spot.
12. Kumar says that he had a clean employment record at the *Shangri-La*. No adverse performance report was ever raised against him.
13. Kumar contends that his resignation was not voluntary. Rather, he was compelled by **DW1**. Key to his claim is that he was detained at **DW1's** Office on 06 March 2018 without his consent and that he was pressured and compelled to sign the resignation letter.

SHANGRI-LA's POSITION

14. The employment contract between Kumar and the *Shangri-La* sets out, *inter alia*, the rate of remuneration and associated benefits¹, the duration of the contract, and the circumstances in which either party might lawfully terminate the agreement. The *Shangri-La* maintains that Kumar's resignation was voluntary and was tendered of his own free will. Notably, the statement of defence highlights that the employment contract included a term and condition which reserved to the *Shangri-La* the right to:

"... dismiss [Kumar] without [the one-month] notice or without payment in lieu of notice for cause...."

ISSUES

15. The central question in this case is whether Kumar resigned of his own free will, or whether he did so under compulsion? Was his resignation engineered and procured under threat of termination to conceal what was, in substance, a summary dismissal? In their Pre-Trial Conference Minutes dated 15 February 2022 and filed on 22 February 2022, the parties identified a number of factual issues which bear upon the resolution of that central question. These might be summarized as follows:
- (i) whether any issues or performance reports were ever raised against Kumar during the course of his employment?
 - (ii) whether Kumar was ever informed that a directive had been received from the *Shangri-La*'s head office in Hong Kong that his services were no longer required?
 - (iii) did Kumar voluntarily go to the General Manager's office on 06 March 2018, or was he summoned?
 - (iv) whether the General Manager showed Kumar a pre-typed termination letter on 6 March 2018?
 - (v) whether Kumar then communicated his desire to resign in *lieu* of termination?
 - (vi) whether Kumar then requested permission to return to his office to retrieve a *pro-forma* resignation letter?

¹ Remuneration - \$17,886.96pa (Seventeen thousand eight hundred eighty- six dollars and ninety-six cents), exclusive of the 10% FNPF contribution by the Defendant. This amount would have further increased to \$19,675.66 (Nineteen Thousand Six Hundred Seventy-Five Dollars and Sixty-Six cents).

- (vii) whether, on 6 March 2018, Kumar was prevented from accessing his usual workstation?
- (viii) whether the General Manager told Kumar that unless he resigned, he would not be given access to his personal belongings in his office and that the Shangri-La would terminate his employment?
- (ix) whether Kumar typed a resignation letter in the General Manager's office in the presence of the Financial Controller, whether it was printed immediately afterwards, and whether he then signed and submitted it immediately after?
- (x) whether Kumar was only allowed to retrieve his personal belongings and leave premises once he typed the resignation letter?

EVIDENCE

Whether any issue of performance was ever raised against Kumar during the course of his employment at the Shangri-La?

16. Kumar maintains that he had a clean record at the *Shangri-La*. I do note that vide a letter dated 20 January 2017 signed by **DW1**, Kumar was advised of a bonus payment for 2016 and that he was to be paid a salary increment of 3.5% for 2017 with effect from 01 January 2017².
17. I also note that vide a letter dated 31 January 2018 by **DW1**, Kumar was advised that the Board of Directors had approved a bonus payment to him of 0.5 months of salary for 2017. He was also cautioned as follows:

"You have not been paid the full bonus for 2017 and the reason for this is due to performance reasons which have been explained to you by your Division Head who will be working closely with you this year on a Performance Improvement Plan"

18. In examination in chief, Kumar responded as follows when questioned about his relationship with management:
 - Q. So, your relationship with management at that time, apart from what transpired. Was it cordial? Was it a good relationship?
 - A. I wouldn't say good but it was very good Sir.

² Letter annexed (Tab 8) to Defendant's Bundle of Documents.

19. In cross-examination, Kumar said the General Manager was not a nasty man and that he has interacted with him on many previous occasions.

Whether Kumar was ever informed that there was a directive from the Shangri-La 's head office in Hong Kong that his services were no longer required? Whether Kumar then communicated his desire to resign in lieu of termination?

20. It is for establish that he did receive information that there was in fact such a directive from Hong-Kong. He led no evidence on this. **DW1** refuted the allegation that there was such a directive about Kumar. I find that there was no evidence of this. Accordingly, I reject the allegation.

Did Kumar voluntarily go to the General Manager's office on 06 March 2018, or was he summoned?

21. Pillai Naidu & Associates submit that at no point in time leading up to 06 March 2018, did Kumar ever intimate to the *Shangri-La* that he would resign from his employment. Rather, Kumar was in fact looking forward to continuing his employment at the *Shangri-La*. He was in his mid to late forties and the retirement age was fifty-five.
22. In light of that, it is asserted that the *Shangri-La* in fact gave Kumar the option of resigning or having his contract terminated. That conduct on the part of the *Shangri-La* amounted to a repudiatory breach of the employment contract and constitutes a constructive dismissal.
23. Kumar's account is that he went to work on 06 March 2018 as usual and at some point, in the late afternoon, he was asked to go to the General Manager's (**DW1**) office. When he got there, **DW1** was there with the Financial Controller, Mr. Vidya Nathan.
24. According to **DW1**, Kumar requested to meet with him on the afternoon of 6 March 2018, at approximately 4.00 to 5.00 p.m. Kumar made the request for the specific purpose of delivering his letter of resignation. **DW1** agreed to the request. He also summoned the Financial Controller (Mr. Mr. Vidya Nathan) to be present as Mr. Nathan was Kumar's immediate supervisor. Mr. Nathan has left the *Shangri-La* and returned to India. He said his Secretary, Ms. Mohini was in a nearby room within earshot. He said the meeting on 06 March was very short –between five to ten minutes.

25. **DW1** said that it is not usual for an employee to see him directly about handing in their resignation, although this is usually handled through the Human Resources Department.
26. **DW1** read the letter of acceptance of Kumar's resignation sent by the Manager of the Human Resources Department. The letter recorded **DW1's** position that he had "decided to waive the notice period".
27. In cross-examination, **DW1** was asked what authority he had to waive the notice period. **DW1** said *Shangri-La* does that all the time whenever the circumstances merit extending such a waiver. In this case, it would potentially harm the company to keep an employee during the notice period whose heart was no longer in *Shangri-La*.

Whether the General Manager showed Kumar a pre-typed termination letter on 6 March 2018? Whether Kumar then communicated his desire to resign in lieu of termination? Whether Kumar then requested permission to return to his office to retrieve a pro-forma resignation letter? Whether, on 6 March 2018, Kumar was prevented from accessing his usual workstation?

28. The onus is on Kumar to adduce evidence to establish these allegations. I accept that this would be quite difficult in the circumstances.
29. According to Kumar, he was given a termination letter and was told to sign it and leave. He said the Financial Controller "was getting a bit angry". He said the reason had to do with the audit findings.
30. However, Kumar did not go into detail about what it was about the audit findings and how (if at all) he was implicated in any Audit Report.
31. He said that he was shown a draft termination letter. He was so upset. He asked **DW1** to allow him to tender his letter of resignation instead. He then requested **DW1** to allow him access to his own workstation so he can retrieve and use a proforma resignation letter which he kept in his computer.
32. **DW1** then directed the Financial Controller to go with him. He said he had to type the resignation letter in the presence of the Financial Controller and then sign it. He then took out all his belongings. He was then asked to leave the premises. He said since that day, he has been feeling depressed as he has been subjected to a lot of name calling and accusations that he was a thief.

Whether the General Manager told Kumar that unless he resigned, he would not be given access to his personal belongings in his office and that the Shangri-La would terminate his employment? Whether Kumar typed a resignation letter in the General Manager's office in the presence of the Financial Controller? Whether the letter was printed immediately afterwards, and whether he then signed and submitted it immediately after? Whether Kumar was only allowed to retrieve his personal belongings and leave premises once he typed the resignation letter?

33. In his evidence in chief, Kumar questions the manner in which the events of 06 March 2018 unfolded. He said the encounter on that afternoon in **DW1**'s office did not include the Human Resources Department. It was only the day after when he was formally notified by the Human Resources Department as per the letter of 07 March 2018.

34. From the evidence, it appears to be common ground that:

- (i) Kumar went to **DW1**'s Office on 06 March 2018.
- (ii) Kumar did appear at the **DW1**'s Office where the General Manager and the Financial Controller were present.
- (iii) Kumar did write a resignation letter on that day after meeting **DW1** and the Financial Controller.
- (iv) Kumar gave the said resignation letter to the Financial Controller.
- (v) the following day, on 07 March 2018, the Director of Human Resources gave him a letter to communicate Management's acceptance of Kumar's resignation.

35. Kumar's undated letter is reproduced in full below:

Please accept this letter as my formal notice of resignation from Shangri-La's Fijian Resort & Spa effective 06th March, 2018. My intention for resigning is due to personal reasons.

My time at Shangri-La's Fijian Resort & Spa has been some of the most rewarding and memorable years of my professional life. I sincerely appreciate the opportunities that I have been given to contribute to the company's success, while growing professionally and personally.

36. On 07 March 2018, he received the following letter from the Fijian:

We refer to your undated letter received by the Financial Controller on 6 March 2018 and advise that Management has accepted your resignation with effect from the same date.

Please be advised that the General Manager has decided to waive the notice period in your contract therefore, 6 March 2018 will be your final day at work.

You will be entitled to payment for any work carried out and any annual leave earned but not taken up to your final day at work. Please ensure that you have returned all hotel properties that have been assigned to you.

On behalf the Management, we take this opportunity to thank you for your contributions during your employment with us and wish you all the best for the future.

Yours sincerely,

*Karen Sorby
DIRECTOR OF HUMAN RESOURCES*

37. **DW1** refutes the suggestion that he had tried to force Kumar to type a resignation letter in his office. He said his computer contained a lot of confidential information and he would not have allowed Kumar to use his computer – nor would he allow Kumar to use his secretary’s computer.
38. **DW1** said that if the *Shangri-La* desired to terminate Kumar’s services, they could have simply given him one-months’ notice. He said the Director Human Resources had not raised any issues regarding Kumar.

ANALYSIS

Constructive Dismissal

39. The concept of constructive dismissal encompasses cases where the employee is more or less instructed by the employer to resign or where the employee leaves employment in response to conduct by the employer which constitutes a repudiation of the employment contract³.
40. In **Fiji Banks and Finance Sector Employees Union v Westpac Banking Corporation** [2004] FJAT 40; Award 34 of 2004 (9 September 2004) the Arbitration Tribunal (as per Mr. W.D Calanchini - as he then was) said:

³ see **Roberts v Prince Alfred George** (1979) 46 SAIR 598; **Transport Workers Union of Australia (WA) v Eastern Goldfields Transport Board** (1989) 31 AILR 398; **Smith v Department of Administrative Services** (1993) 35 AILR 384).

Constructive dismissal is the term which is commonly applied to a resignation by the employee in circumstances such that he or she is entitled to terminate the contract without notice because of the employer's conduct. (**The Law of Termination of Employment 6th Edition Robert Upex at page 135**).

In **Auckland Shop Employees Union – v - Woolworths (NZ) Ltd** [1985] 2 NZLR 372 the New Zealand Court of Appeal identified at least three separate situations where a constructive dismissal can occur. First, where a worker is given a choice of resignation or dismissal. Secondly, where the employer has followed a course of conduct with the deliberate and dominant purpose of coercing an employee to resign. Thirdly, where a breach of duty by the employer leads a worker to resign. The Tribunal has adopted this statement as correctly stating the position in law.

41. In **Singh v Suncourt Hardware Ltd** [2012] FJET 41; ERT Grievance 21.2011 (7 November 2012), the Employment Relations Tribunal said constructive dismissal occurs when an employee resigns or is forced to leave his/her employment and that the concept of constructive dismissal:

3.3 ... comes from the concept that: "...an employer must not, without reasonable or proper cause, conduct himself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and the employee." (**Courtaulds Northern Textiles Ltd v Andrew** [1979] IRLR 84, EAT.)

Test

42. In **Mohazbad v Dick Smith Electronics** [1995] IRCA 272⁴, the Industrial Relations Court of Australia stated that, the question to ask is, had the employer not taken the action it did, would the employee have remained in the employment relationship.

In these proceedings it is unnecessary and undesirable to endeavour to formulate an exhaustive description of what is termination at the initiative of the employer but plainly an important feature is that the act of the employer results directly or consequentially in the termination of the employment and the employment relationship is not voluntarily left by the employee. That is, had the employer not taken the action it did, the employee would have remained in the employment relationship.

This issue was addressed by Wilcox CJ in **APESMA v David Graphics Pty Ltd ("David Graphics"), Industrial Relations Court of Australia**, NI 94/0174, 12

⁴ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/IRCA/1995/645.html>.

July 1995, as yet unreported, Wilcox CJ. His Honour, at 3, referred to the situation of an employee who resigned because "he felt he had no other option". His Honour described those circumstances as: -

"... a termination of employment at the instance [of] the employer rather than of the employee".

and at 5:-

"I agree with the proposition that termination may involve more than one action. But I think it is necessary to ask oneself what was the critical action, or what were the critical actions, that constituted a termination of the employment."

43. I adopt the above position.

Onus

44. I agree with the Employment Tribunal's observations in **Singh v Suncourt Hardware Ltd** (supra) that the onus is on the employee to prove that an intolerable working condition in fact existed, that the employer was responsible for introducing that intolerable working condition, and that the said working condition did in fact initiate the employee's resignation.

3.4..... It would seem that the onus ... [is on] .. the claimant to prove first that indeed unfair dismissal occurred by virtue of a forced discharge or resignation. Once this is established as the foundation of "unfair" or "unlawful" dismissal, then the employer ..[must].. provide justification ... for his/her dismissal.

45. Kumar must prove firstly, that his account of the conduct of **DW1** between 05 and 06 March 2018 is the truth and, secondly, that, viewed objectively, **DW1's** conduct demonstrated that the *Shangri-La* was no longer interested in honoring the terms of the contract of their employment, that is, that **DW1's** conduct amounted to a repudiatory breach thereof.

46. I note two key points about Kumar's resignation letter. Firstly, it is undated. Secondly, there is an unmistakable sense of impulsiveness in its tone. Mr. Daveta appears to suggest by his cross-examination that:

- (i) the fact that the letter was undated and bears a distinctly hasty tone may support an inference that Kumar was compelled to submit a resignation during the brief period he was in the General Manager's office.

- (ii) the tone of the letter conveys no sense of gratitude, professional courtesy, or any expression of goodwill. One would expect a resignation from an employee who has long maintained good terms with his employer to be more measured and engaging in that regard.
- (iii) the fact that *Shangri-La* accepted Kumar's resignation immediately and without hesitation is noteworthy. That Kumar was not permitted to serve a notice period, coupled with all the points noted above, strongly suggests that he was being effectively pushed out of his employment.
- (iv) having served ten years as Service Manager, Purchasing and six years before that in various other positions – it is improbable that Kumar would choose to resign in the heat of the moment.

Heat of the Moment Resignation?

- 47. On this last point, Mr. Daveta did cross-examine as to why **DW1** did not give Kumar an opportunity to mull over and reflect on his seemingly heat-of-the moment decision to resign, or why **DW1** chose not to inquire further to ascertain Kumar's true intentions.
- 48. There are a myriad of cases in England which lay down the principle that, where an employee has made a decision to resign, and which decision was made in the heat of the moment under special circumstances, the employer must first investigate the employee's true intention before accepting the resignation.
- 49. Hence, in **Kwik-Fit [GB] Limited v. Lineham** [1992] IRLR 156, it was held that a failure to investigate, in special circumstances, would support a finding of constructive and unfair dismissal.

(see also **Sothern v Frank Charlesly** [1981] IRLR 278; **Barclay v City of Glasgow District Council** [1983] IRLR 313; **Hornby v Kirkham Engineering Company Limited** [2020] Case No:2411274/2019; **Sovereign House Security Services v Savage** [1989] IRLR 115; **Denham v United Glass Ltd** EAT 581/98).

- 50. In **Hornby v Kirkham Engineering Company Limited** [2020] EAT Case No:2411274/2019, the Tribunal said:

17. ... where there are unambiguous words of resignation, the case law says that they can be taken at face value without the need for any analysis of the surrounding circumstances. There is no need therefore to consider what the employee actually intended or what a reasonable employer might have

assumed they intended. Sothorn v Franks Charlesly and Co [1981] IRLR 278 CA.

18. ... however ... whilst unambiguous words of resignation should normally be taken at their face value, in special circumstances a Tribunal would be entitled to decide, or can decide, that there is no resignation despite appearances to the contrary. In Sovereign House Security Services v Savage [1989 IRLR 115], the Court of Appeal confirmed that unambiguous words of resignation spoken in the heat of the moment did not necessarily amount to a resignation. Mr Green has given me examples of what Case No. 2411274/2019 might amount to “heat of the moment” and I have considered these in coming to my decision.

19. I also refer to the case of Denham v United Glass Ltd EAT 581/98 where the EAT found that the claimant had resigned in clear and unambiguous terms. What the EAT went on to say is that it is only where there is doubt as to whether the employee intended to resign that the Tribunal can go on to consider whether there were special circumstances.

20. In Kwik-Fit (GB) Limited v Lineham 1992 ICR 183 EAT the EAT did not go so far as to say that in such situations where there are special circumstances there is a duty to reconsider events, rather than in such situations a prudent employer would do so and would allow a reasonable period of time to elapse before accepting a supposed resignation. The length of time that is reasonable for a prudent employer to wait before accepting a supposed resignation is a question of fact for the Tribunal.

51. I have not had the benefit of submissions on whether the above position forms (or should form) part of Fiji’s jurisprudence. In any event, although Mr Daveta’s cross-examination appeared to circle the issue, his case theory ultimately failed to press the point.
52. What I am prepared to say is that, in an appropriate case, the haste with which a resignation is prepared, coupled with the speed of its acceptance by the employer, may form an important part of the surrounding circumstances supporting an argument that the resignation was induced.

CONCLUSION

53. In this case, I do not think that the resignation was induced. My reasons follow:
 - (i) Kumar waited roughly fourteen months before filing the action.

- (ii) while the fourteen-month “wait” does not contravene any statutory limitation period, the absence of promptness may, taken with other factors, reasonably inform the Court’s assessment of the plausibility of his account.
- (iii) Kumar’s case appears to rest on a two-limbed argument. First, that there was a directive from Hong Kong that his services were no longer required. Second, that, acting on that directive, **DW1** then engineered the events that culminated in his resignation. However, Kumar was unable to establish that any such directive from Hong Kong existed.
- (iv) Kumar led no evidence that **DW1**, Mr. Vidya Nathan, or any other person at Shangri-La did engage in conduct or created circumstances that made working there difficult.
- (v) rather, Kumar’s case theory rests entirely on what transpired in **DW1**’s office on the afternoon of 6 April 2018.
- (vi) Kumar maintains that he enjoyed a generally cordial relationship with his employer and that no performance concerns were raised during his tenure. In the circumstances, those factors point more toward *Shangri-La* having no apparent motive to summarily dismiss him. They do not establish that he was unfairly dismissed.

54. In the final, I dismiss the Writ of Summons and Statement of Claim. I order no costs.



Anare Tuilevuka
JUDGE

18 December 2025

