

IN THE STATUTORY TRIBUNAL, FIJI ISLANDS
SITTING AS THE EMPLOYMENT RELATIONS TRIBUNAL



Decision

Title of Matter: Joji Nakaora (Grievor)
v
Fiji Teachers Association (Employer)

Section: Section 211(1)(a) *Employment Relations Act 2007*

Subject: Adjudication of Employment Grievance (Unjustifiable or Unfair Dismissal)

Matter Number(s): ERT Grievance 183 of 2016

Appearances: Mr F Anthony, Fiji Trades Union Congress, for the Grievor
Mr S Valenitabua, Toganivalu & Valenitabua Barristers and Solicitors for the Employer

Dates of Hearing: 20 May 2017, 21 May 2017, 27 May 2017, 23 August 2017, 11 September 2017, 8 January 2018 and 9 January 2018.

Before: Mr Andrew J See, Resident Magistrate

Date of Decision: 26 March 2018

KEYWORDS: Unjustifiable dismissal; abuse of office; failure to follow directions of an employer, conflict of interest

CASES CONSIDERED

Josifini Lagi v Nadi Town Council ERT Grievance 173 of 2016; [2017] FJET 7; ERT Grievance 173.2016 (27 March 2017)

Kumar v Nanuku Auberge Resort Fiji [2017] FJET 2; ERT Grievance No 122 of 2016 (10 February 2017)

Peni Koro Lagi v Calm Fire Professionals, [2018] FJET 4; ERT Grievance 183 of 2017 (4 January 2018)

Rentokil Initial Ltd v Kean [2013] FJHC 193; ERCA 6.2013 (17 April 2013)

Shell Fiji Ltd v Johnson [2010] FJCA 52, ABU0012.2009 (23 September 2010)

Yanuca Island Limited trading as Shangri Law Fiji Resort and Spa v Vani Vatuaruku [2017] FJHC92; ERCA 9 of 2014 (8 February 2017)

Background

1. This is a referral made to the Tribunal in accordance with Section 194(5) of the then *Employment Relations Promulgation 2007*. The referred matter relates to a grievance lodged by Mr Joji Nakaora on 18 October 2016, where it is claimed that he was terminated in his employment, due to reasons that could not be justified.

2. The reasons for the dismissal in employment by the Employer, were set out within a letter addressed to the Grievor on 15 October 2016, that provide two grounds as justification for the termination, under the headings of:-
 - Misappropriation of funds, abuse of office and dishonesty; and
 - Insubordination and conflict of interest.
3. At the outset of the proceedings in this matter, the Tribunal encouraged the parties to submit to a 'without prejudice' mediation process, in a bid to attempt to resolve this grievance in a far more cost effective and expeditious fashion. Unfortunately, despite some encouraging signs, the matter was unable to be resolved in that way and the application for remedy, was ultimately heard before the Tribunal over more than five days.

Preliminary Matters Before the Tribunal

4. When the matter was first listed for scheduling on 13 February 2017, the Employer's Legal Representative Mr Valenitabua indicated that he would be calling four witnesses to give evidence in proceedings.¹ In turn, Mr Anthony for the Grievor, stated that he would be subpoenaing various members of the Association, as well as calling on the evidence of Mr Nakaora himself. As it transpired, the Association did not call any witnesses to give evidence. The Grievor gave evidence on his own behalf and called two witnesses, Ms Iva Volavola Powell and Mr Saimoni Vuetaki. The Tribunal of its own motion, directed that Mr Marika Uluinaceva, Principal Administration Officer, FTA and Mr Semi Vela, former FTA Treasurer, appear to give evidence.

Saimoni Vuetaki

5. Despite the fact that in cases of this type that the Employer proceeds first, it was agreed to interpose witnesses and to call Mr Vuetaki as the first witness for the Grievor. Saimoni Vuetaki is the Head Teacher at the Vei Loa Loa School. At the relevant time, Mr Vuetaki was a Board Member of the Fiji Teachers Association and told the Tribunal that he had warned the Executive Committee against taking the approach that it was intending to take, to dismiss Mr Nakaora. Mr Vuetaki's evidence was that when he was absent due to illness, that the Board Members passed a resolution that the Grievor should be terminated immediately.² Mr Vuetaki said that he had warned the Executive Committee to not seek to take the proposed action against Mr Nakaora, because he was convinced that the allegations levelled against him were not true. The witness said that he was sick on the day that the Executive had their final meeting and had not seen the report of the *Board of Inquiry Report No 2* that gave rise to the dismissal. Mr Vuetaki told the Tribunal that the Executive members had not been privy to the General Secretary's response to the allegations levelled against him, as these had not been submitted to the Executive Committee. According to Mr Vuetaki, "we did ask for a copy of the report, but we were told the lawyer has report." The witness said that whilst he did not ask of the report from the lawyer Mr Valenitabua, that he did ask the Union President, however he was not forthcoming in this request.
6. Mr Anthony for the Grievor, then took the witness to the specific allegations levelled against the General Secretary, as set out within the Board of Inquiry 2 Report and the responses of the witness to those issues have been summarised as follows:

¹ The Association President and Secretary and two employees.

² See Exhibit G1, that sets out the minutes of the 'Board of Inquiry 2 Report'.

- (1) Gross Communication – COPE Communications and Correspondence did not reach concerned parties.

Mr Nakaora was elected to be President of COPE and the result was not accepted by the Executive Committee. All FTA correspondence was forwarded to the FTA lawyer at that time. According to the witness, Mr Nakaora had been asked to attend the COPE Meeting by the late FTA President.

- (2) Incompetent – Not working in the best interest of the Union.

The witness was unable to provide any examples where this was the case.

- (3) Extravagant- Misappropriation of Union funds for leverage (approval of other executives loan) or personal use.

Mr Vuetaki told the Tribunal he was aware of the case where a loan application from the Co-operative had been brought forward early, however said that he was of the understanding that the loan had been approved and that he had no knowledge of any misappropriation of the Association's funds. The witness said that to his knowledge, the General Secretary did not approve any of his loan applications made to the Co-operative.

- (4) Abuse of Office – Use of union vehicle on three (3) different occasions for personal reasons.

According to Mr Vuetaki, this issue had been brought up at a meeting of the Union Executive, but the arrangement had been one that was made by the former President and the Grievor. Mr Vuetaki was of the view that there had been no misuse of his office.

- (5) Recruitment of Personnel Without Board Approval.

The witness was not aware of any such arrangement.

- (6) Approval of construction and maintenance repairs without following proper channel.

Mr Vuetaki told the Tribunal that this issue was brought up by the late President. The witness said that the budget of \$85,000 was approved by a working committee, consisting of the President and 2 Vice Presidents and that he was not aware of any wrongdoing of the former General Secretary in this regard.

- (7) Abuse of Power- Threatening internal staff to carry out operations which need Board approval.

The witness said that as a Board Member, any concern of this type should be brought up at an Executive Meeting and that the issue was never previously brought up.

7. It was then put to the witness, that this was the "overwhelming evidence" that was referred to within the *Board of Inquiry No 2 Report* that was relied upon by the Association to justify the termination of the Grievor. Mr Vuetaki, told the Tribunal that he did not agree with any recommendation to terminate on that basis. The witness restated that he had not seen the Grievor's response to these issues until at the hearing today, though said that he was involved at the Meeting on 15 October 2016, in which the decision was made to enable the "General Secretary to go on leave with full pay till December."³ The witness told the Tribunal that he had

³ The effect of this from the evidence, was that the General Secretary was given a three month 'ex-gratia' payment.

been a board member of the Association for the past seven years, that he was aware that the Grievor had sought an audience with the Executive Committee to explain his situation and that when the Committee members asked the late President for this to take place, were advised that this was a decision that he and the FTA lawyer would make. Mr Vuetaki told the Tribunal, that he thought such action by the President was unfair. Mr Anthony asked the witness was the Grievor given an opportunity to explain or mitigate any alleged behaviour and he replied, no. By way of summary, Mr Vuetaki reaffirmed that he did not consider that the Grievor had misappropriated any money and that he was not aware of any occasion where he had abused his office, acted dishonestly, was insubordinate, or had undertaken his work with any conflicts of interest.

8. Mr Vuetaki was then asked to explain the workings of the Fiji Teachers Association Co-operative Limited (FTACL), sometimes referred to as THRIFT, in which he then gave an account of the manner in which board members of that entity were elected, separately from the voting rights and responsibilities of the Fiji Teacher Association executive members. The witness told the Tribunal that the Boards of these two entities were separate, formed differently and with different responsibilities. The witness explained that the Board of the Co-operative reported to the Annual General Meeting of that body and that this was its supreme authority and not the Executive Committee of the Fijian Teachers Association. Mr Vuetaki told the Tribunal, that this arrangement was provided for within Clause 12 of the *By-Law of Fijian Teachers Association Co-operative Limited*. The witness was not aware as to whether the Grievor had been given a final warning by the Chair of the Co-operative. During his evidence in chief, the witness said that any disciplinary issues regarding the conduct of the Co-operative needed to be addressed by the Co-operative. Mr Vuetaki stated that the protocol should be, that once any decision was taken by the Board of the Co-operative, that they would forward that to the Executive Committee of the FTA. The witness stated, that he was not aware of any such matter being referred to the FTA Executive.
9. During cross examination by Mr Valenitabua, the witness was asked whether or not he had seen a Disciplinary Action Warning, dated 17 December 2015, that had been issued by the then Chairman of the Co-operative, Mr Halofaki to the Grievor in which various conduct complaints were levelled against him⁴. Mr Vuetaki accepted that he had seen the document and also conceded that the then Chair of the Co-operative was also the President of the FTA. Mr Vuetaki agreed that he was part of the FTA Executive Committee that made five resolutions concerning the conduct of the Grievor in this regard. These resolutions dealt with financial practices that had been adopted by the Grievor in relation to the approval of loan arrangements and on one occasion, the financing of a motor vehicle for his private use. Mr Vuetaki indicating that he was both aware of all of these issues being brought to the attention of the Grievor and that he had understood there had been compliance with the requests as made. Thereafter Mr Valenitabua took the witness through the governance arrangements of the Association and the witness largely conceded that whilst the various disciplinary actions were undertaken within the

⁴ See Exhibit G4 (Also included within the Employer's Bundle of Documents filed on 8 January 2017 at Folios 34-35).

Authority of either the Executive Committee or President, that at least in the case of the dismissal, that he was not in support of such an outcome.

Joji Nakaora

10. Mr Joji Nakaora is the Grievor in proceedings. In his evidence he told the Tribunal that he had worked as a school teacher for 23 years and prior to holding the role of General Secretary of the Fiji Teachers Association (FTA) was the Vice Principal of the Ratu Kadavu Memorial School (RKS). Mr Nakaora told the Tribunal that he had resigned from his post with the RKS to take up his appointment with the FTA and this had the effect of relinquishing his entitlements and benefits from the Civil Service. In relation to the Fiji Teachers Association Co-operative Limited (FTACL), the witness said that he was elected to be the Chairman of the Board of the Co-operative by members of the co-operative at a Special General Meeting, following the departure of the previous General Secretary. Mr Nakaora said that he was removed from the Board on 7 December 2015.

11. One of the key criticisms of the Grievor's conduct levelled at him within the various Employer material, related to the holding of a Triennial Meeting of the Council of Pacific Education(COPE) in Nadi, Viti Levu, at which the General Secretary was appointed to the position of President of that body. The meeting was held between 29 August to 2 September 2016 and at that time, there was an election for officer bearers. The witness said that he was alerted to the fact that his Employer, the FTA was not happy with his appointment, when he had heard that there had been a meeting of a Working Committee convened on 9 September 2016, to which he was not invited. He said that in the following week, he learnt of a series of allegations being levelled against him, including the claim that he did not first seek the approval of his employer, the FTA prior to putting himself up as a nominee for election as COPE President. The witness was shown the Minutes of a Meeting entitled, *Board of Inquiry into Allegations Against the General Secretary's Abuse of Office- 12 September*⁵ and says that he was ultimately asked to respond to the allegations arising out of that meeting. Mr Nakaora told the Tribunal that he had submitted a response to the allegations on 13 October and had requested a meeting with the FTA Executive in order that he could present his case, before they deliberated. According to the witness, this request was not granted. The witness said that following the Board of Inquiry making these findings that he had sought to speak with the President in relation to the matter, however stated that "he didn't allow any time with me". Mr Nakaora was referred to a document entitled, *Board of Inquiry 2 Report*, dated 28 September 2016, in which he was found guilty by the members present, of "serious breaches on work processes and ethics".⁶ The witness told the Tribunal that none of these allegations were put to him and that the report was not available to him at the time of termination.

12. Mr Nakaora said that he received a letter of termination dated 15 October 2016 from the Respondent Employer, when it was delivered to his home on that same day. The witness said that three of the Executive, Messrs Semi Vela, Joeli Bule and Netani Drauvesi arrived to his

⁵ See Exhibit G8.

⁶ See Exhibit G1.

home and Mr Bule indicated that he had a right to appeal. ⁷The witness said that despite that, he was still not able to meet with the Executive or the President of the Association. The witness was referred to Exhibit E1, which were minutes of the Executive dated 14 October, in which it was agreed to make an ex gratia payment of three months wages to the Grievor, in effect paying him until 31 December 2016. Mr Nakaora told the Tribunal that he was not at that meeting, nor was he invited to attend. The witness said that he was not paid any entitlements due at termination, including accrued annual leave entitlements and still had not at the time of the giving of his evidence. According to the witness, he had inquired from the Principal Administration Officer and the Human Resource Officer as to his annual leave entitlements and was subsequently told after the burial of the late President, that “through advice from legal office that we are withholding payment because case is in court”⁸.

13. Mr Nakaora said that he made four attempts to get paid annual leave, but was told that “Simi Valenitabua advised not to pay because of the application in the Tribunal”. Mr Nakaora said that Mr Valenitabua was the same legal adviser who advised the Board that he could not attend the meeting on 17 September when the issues pertaining to the First Board of Inquiry were being discussed. He said that whilst he was asked to leave the meeting, at no time was he then given the opportunity to come back and present his case. In relation to his removal from the FTACL Executive, Mr Nakaora told the Tribunal that he was removed along with three other members “because of a legal opinion from Mr Valenitabua”. According to the witness, he was told that the “(FTACL) Board does not exist, only the Board appointed by the FTA”. Under cross examination, the Grievor conceded that he was initially provided with the Facts and Findings of the *Board of Inquiry No 1*. Counsel for the Employer, then proceeded to ask the witness questions pertaining to the specific allegations that had been levelled against him. In relation to the COPE Workshop, the Grievor conceded that he was provided with funds to attend the workshop and said that he attended along with the President of the Women’s Workshop and with a group of Executive who attended one function on one of the evenings. It was put to the witness, that the Vice President Ms Kamikamica had not been informed of the meeting, yet this proposition was rejected. The witness was asked about his expenses for that workshop and admitted that he had been given in excess of \$3000.00 to attend the meeting. A particular focus within the cross examination, related to the failure of the Grievor to endorse the nomination of Women’s Network member, Ms Unaisi Vuetaki for the Alisi Fusi Wightman Award; a scholarship program made available to female unionists in honour of the work of the former unionist and educator. It was put to the witness, that Ms Vuetaki should have been nominated by him and as such lost the opportunity to be a scholarship recipient. The witness rejected that he was responsible for the nomination process.

14. Mr Nakaora was challenged by Counsel in relation to the loans that he had secured from the FTACL, while holding a position as member of the Board of that institution. In his evidence, the witness distanced himself from any of the approval processes and said that there was a separate credit committee established by the Co-operative who was charged with that task. It was put to the Grievor that at the time of termination, he was giving an opportunity to contest the decision

⁷ The Tribunal does not believe there is any right of appeal that would exist in such cases, by virtue of the language of Section 37 (i) of the *FTA Constitution*.

⁸ The witness claimed that he was told this by the Human Resource Officer.

and had at that the time been represented by a lawyer. Mr Nakaora acknowledged that he did have legal representation at that time. The witness was challenged in relation to the existence of any legal opinion in place in relation to the removal of the board members of the FTACL and in turn, conceded that he had neither seen nor had in his possession, such an opinion.

Approval of FTACL Loans

15. The witness agreed that in his role as a member of the FTACL Board and General Secretary of the FTA, that he was signatory to both entities bank accounts and accepted that all loans need approval by the Board. Mr Nakaora was asked about the approval process in which loans were issued and told the Tribunal that he never took it upon himself to approve his own loan. Mr Valenitabua took the witness to the Statement of Reasons for Termination⁹, in which one of the allegations levelled against him, was the fact that he had been instrumental in giving approval to his own loans. Mr Nakaora refuted that suggestion and said that the President had approved his loans. According to the witness, after being sanctioned by the governing body in relation to his car loan in 2015¹⁰, that thereafter he ensured that the President approved all of his loans¹¹.
16. The witness was then taken to the delegations and authorities of the FTA and conceded that he was answerable to the Executive Committee and that this was the body that had endorsed his termination in employment. Mr Nakaora was referred to the letter of warning issued to him in December 2015 and agreed that he had been cautioned in relation to a range of conduct issues that required rectification. The witness agreed with Counsel that he did not challenge the terms of the letter that he had received.

Failure to Allow Ms Kamikamica Opportunity to become President COPE

17. One issue that seems quite central to the case of the Respondent, was that concerning how it was that the Grievor became President of COPE. At Paragraph 4 of the *Statement of Reasons of Summary Dismissal*, it was identified to the Grievor that he had acted dishonestly in misrepresenting to stakeholders that he had the mandate of the President and or the Association, to be nominated for the position of President COPE and that Ms Nanise Kamikamica, would have been made President, but for his actions. The witness refuted that suggestion and told the Tribunal that Ms Kamikamica was not present at the meeting, so could not have been nominated in any event. The Grievor conceded that he was not nominated by the FTA, but by someone else in attendance at the meeting. Mr Nakaora told the Tribunal that he had been told by the General Secretary of COPE that he could not nominate a person who was not in attendance at the meeting. It was then put to the witness, that Ms Kamikamica did not attend the meeting, because Mr Nakaora had not informed her of it. The witness again rejected that proposition and told the Tribunal that Ms Kamikamica had attended the meeting on the first day. The witness told the Tribunal that a Mr Govind Singh had told Ms Kamikamica to stay at the meeting if she wanted to be nominated, but that she did not do so.¹²

⁹ See Exhibit G3.

¹⁰ See Exhibit G4.

¹¹ The Tribunal accepts this evidence as being the reality of that situation.

¹² Ms Kamikamica could have been called as a witness to dispute this claim, but for whatever reason the Employer elected not to call her to give evidence.

Conflict of Interest

18. It was further put to the witness, that by his actions in independently securing the position of President of COPE, that he had breached the terms of Clause 22 of his Employment Contract, insofar as he would not then be devoting his full attention to the performance of his duties. Mr Nakaora rejected that position. Further, Mr Valenitabua put to the witness that it was implicit within this contractual term, that he would have required the permission of his employer, so as to undertake the tasks of President, COPE. Again, the witness rejected that position. It was further put to the witness, that as he had assumed two roles within two discrete entities, that he would potentially find himself in a position of conflict. Mr Nakaora told the Tribunal that the FTA had similar objectives to COPE, although admitted that the affairs of COPE extended to Samoa, the Cook and Solomon Islands and the Fiji Teachers Union. The Grievor emphasised that his appointment as President was an Honorary Appointment. In relation to the allegations that were put to the witness at the time of his suspension from employment, Mr Nakaora agreed that he was given an opportunity to respond to the allegations.
19. In re-examination, the witness told the Tribunal that his response to the allegations given to him had contained what were alleged to have been missing emails from the Employer and that he had not been contacted further in relation to the Employer not being able to allocate those documents. Mr Anthony asked the witness to consider the *Board of Inquiry Report No 1*¹³ and questioned him as to whether this was in fact minutes of the FTA Executive. In relation to the nomination of a person for the Wightman Award, the witness told the Tribunal that Mr Uluinaceva had signed the nomination for him and that he never had the allegations in relation to that complaint, brought to him.
20. Mr Nakaora restated to the Tribunal the events that took place in relation to the COPE Meeting, his nomination for President and the Wightman Scholarship process. The Grievor told the Tribunal that Ms Kamikamica, was granted only one day's leave to attend the conference from her employer. According to the Grievor, Ms Kamikamica, was in Labasa at the relevant time at a Union branch meeting with the President. The former General Secretary stated that it was representatives from the Solomon Island Teachers Union that nominated him for President of COPE. According to Mr Nakaora, that Association was waiting for the outcome of the Employment Tribunal deliberations prior to determining whether he should remain as President, as the position requires the incumbent to be a current office holder of a Union. Mr Nakaora, said that he was seeking reinstatement in his former role, as he could not see what he had done wrong, The witness restated that in relation to obtaining loans from the FTACL, that he never had approved his own loan, but that this was something done by the Board of that Co-operative.

Mr Semi Vela

21. Mr Semi Vela was an interposed witness, called by the Tribunal to give evidence in relation to the outstanding payments due at the time of termination. Mr Vela is a retired school teacher and was the Treasurer of the FTA at the time that the Grievor was terminated. The Tribunal

¹³ See Exhibit G8.

asked Mr Vela, who revoked the decision of the Executive Meeting to pay the Grievor wages up and until 31 December 2016. Mr Vela stated that the President made this decision exercising his Executive Authority. According to the witness several days after the Grievor's termination, he had given him a cheque in accordance with the resolution of the Executive Committee Meeting on 14 October 2016, as payment for his outstanding entitlements, although the President used his powers to stop payment of the cheque. Mr Vela said that the President did not mention anything about that 'stop payment' at the next Executive Meeting.

Ms Iva Powell

22. Ms Powell was called to give evidence on behalf of the Respondent Employer. The witness holds the position of Assistant Secretary, FTA and has been in that role for the past three years. Ms Powell said she was a member of the Board of Inquiry dated 12 September and said that the role was to look into the books and investigate any discrepancies against Mr Nakaora. According to Ms Powell, these books and records included, "application for loans, payment vouchers and the like." Counsel for the Association, took the witness through a large bundle of photocopied documents¹⁴ The witness told the Tribunal that the Board of Inquiry had been appointed by the Working Committee of the FTA. Ms Powell said that investigation also looked into trips and expenses claimed by the Grievor, when monies did not balance with statements of claim. A further issue that the witness said her special committee considered, were those affairs that were being undertaken by the Grievor that were not in the best interests of the Union. Such issues according to the witness, included the Grievor's COPE nomination and the fact that in his role as President of COPE, he would be required to travel overseas and not give priority to his duties in regional Fiji. Upon closer scrutiny of the evidence, Ms Powell admitted that she only assumed that this was the case and that she had no data to support such a fact. The witness further conceded that she did not know where the COPE Office was based within the region. Ms Powell admitted that the Union would benefit from the work of COPE, but maintained that in the case of the Grievor, he would have been required to have his duties and involved first mandated by the Union. According to Ms Powell, she did interview both Ms Kamikamica, who was Vice President of COPE, as well as a Board Member, Mr Peni Delaibatiki in relation to specific COPE related concerns. Having said that, the witness ultimately conceded that there was no such stipulated provision within the FTA Constitution that prohibited such an appointment to an Honorary external position. The witness conceded that she was operating under the mistaken belief that the Constitution required the Grievor to seek permission from the Executive Committee. Ultimately, the witness agreed with the proposition that the Grievor had not violated the Constitution by accepting a position as President of COPE. Ms Powell admitted to the fact that she did not interview the Grievor as part of her inquiry. The witness told the Tribunal that the Grievor had a "file of these allegations" and did provide an answer to the formal suspension letter on the last day of his suspension.

¹⁴ See Employers Bundle of Documents dated 8 January 2017.

23. Ms Powell was asked to indicate to the Tribunal what evidence that she relied upon, in compiling her Investigation Summary. The witness referred to an email from the COPE Secretariat dated 30 July 2016, in which notification of the Triennial Meeting, to be held in Nadi was provided¹⁵. The witness then referred the Tribunal to a series of expenditure acquittals.¹⁶ It was claimed by the witness that in relation to the advances shown at Folio 42, that \$505.00 was not accounted for, as there were no receipts provided. The witness conceded that these money amounts had been approved by the President and that it did not show that the receipts were not accounted for by the Grievor. The witness said that she relied on the words written by the Accounts Office “\$505 pocketed” as substantiation for the allegation, but said that she neither sighted receipts nor received any formal report from the Accounts Office. By way of further illustration, in relation to Folio 43, the witness said that this had shown that the General Secretary had received \$1,050.00 over whatever was needed for the Incentives to be paid to the Kadavu members, although again conceded that the advance was approved by Madam Vula, of ‘Thrift’. The witness agreed that the payment was also approved by the now Acting General Secretary, Mr Delaibatiki. The witness claimed that Madam Vula was under duress at the time to sign the acquittal, however did not know what was the state of how and why Mr Delaibatiki signed the document¹⁷.
24. Ms Powell was then referred to Folios 47 to 72 within the Employers Bundle of Documents and agreed with Mr Anthony, that these related to loans obtained through the THRIFT Co-operative. The witness was asked why was it that the investigation that she undertook proceeded to investigate loan authorisations involving the Co-operative and not the FTA. Ms Powell responded that this was because the Grievor had appointed himself to the role of Chairman of the Co-operative and that he had approved all of his loans. When asked by Mr Anthony, which Folio was evidence of the Grievor approving his loan, the witness referred the Tribunal to Folio 53. Ms Powell stated that whilst the loan was verified by a person identified as a Department Supervisor, that this took place under duress. The witness then clarified that this was not a loan application, but rather approval for the release of funds after the loan had been approved. Ms Powell further agreed that Mr Nakaora did not approve his own loan. In what became quite contradictory evidence, in one breath Ms Powell stated that the Grievor had taken out the loan as he was “self- approving” and then in another, she would agree that it was Mr Halofaki, the then President, who had approved the loans and not the Grievor. The witness was asked could she identify any other examples of where the Grievor had approved his own loan and referred to Folios 48 and 41. Mr Anthony put to the witness that these documents were nothing more than a Members Loan Statement. It was further put to Ms Powell, that she was quite incorrect in telling the Tribunal that the Grievor had approved his own loan. The witness accepted that this was the case. Ms Powell was then taken to the specific matters that she had raised as allegations against the Grievor within the *Board of Inquiry Report No 1, dated 12 September 2016*. The first issue raised, related to the claim that in relation to the COPE Workshop, that the Grievor had failed to arrange for delegates leave. Ms Powell raised specifically, the fact that the Grievor had failed to facilitate the leave for Ms Vuetaki, but then indicated to Mr Anthony, that he would be best asking her in relation to the specific details.

¹⁵ See Folio 41 of the Employer’s Bundle of Documents.

¹⁶ See Folios 42 to 44 pf the Employer’s Bundle of Documents.

¹⁷ Again, there is simply no direct evidence to support such a claim.

25. Ms Powell said that she was also responding to a letter of complaint that she was received from Mr Delaibatiki, in which it was claimed that the Grievor had been discriminating against him. Ms Powell after some prevarication, admitted to having not seen that communication. In relation to the complaint regarding the Grievor's apparent unilateral decision to sponsor a local dance group to perform at the COPE Meeting, Ms Powell suggested that approval for this expenditure, should have been taken by the Executive and not Mr Nakaora individually¹⁸. Ms Powell said that whilst this issue was put to the Grievor and he was asked to respond to it, she herself was not privy to any response provided. Ms Powell admitted that it was unfair that the response of Mr Nakaora was not considered by the Executive.

Board of Inquiry Report No 2

26. Ms Powell told the Tribunal that she was part of the Board that undertook and signed the Second Report into Mr Nakaora's conduct. Again the witness focused on the fact that Mr Nakaora had no mandate to undertake the role of President of COPE and that it was outside the 'scope of works' set out within his employment contract. Ms Powell said that she was of the view that this conduct amounted to 'gross misconduct'¹⁹. The witness told the Tribunal that it "was the way he went about it" and that COPE correspondence should be passed on to the Executive Committee. Having said that, the witness said that there was nothing wrong with the former General Secretary asking that all correspondence be directed to him from COPE in the first instance.

27. Ms Powell said that putting the Vice President, Ms Kamikamica "out of the picture.. was conniving of him". The witness said that her concerns did not start with COPE, but had started with the Women's Network and said that when Ms Unaisi Vuetaki and herself had gone to the COPE Conference that they were snubbed by the Grievor. The witness repeated the complaint that they were only given a few minutes in order to have Mr Nakaora provide his signature to a nomination form proposing Ms Vuetaki for the Alisi Wightman award²⁰.

28. Mr Anthony put to the witness that the Board of Inquiry was used as an excuse, to "fix Mr Nakaora up" and Ms Powell agreed with that proposition. The witness told the Tribunal that Mr Nakaora was not interviewed by the Committee in relation to this group of issues and said that whilst he was given the opportunity to provide a written response, that the Committee members were not given the liberty to look at the response, as it was addressed to the President Mr Halofaki. According to the witness, the Executive had told the President that it was unfair that they could not look at the response and asked to see it, but were not privy to that letter. Ms Powell further stated that she herself would not wanted to be treated that way. Ms Powell said that the Executive members had further insisted that the President provide that correspondence, but he refused to provide it to them. Ms Powell said that the Committee were told by the President, that they could terminate the Grievor with cause. Ms Powell accepted the

¹⁸ The Tribunal accepts that this is the right position.

¹⁹ The Tribunal does not believe that this would constitute 'gross misconduct' for the purposes of Section 33 of the *Employment Relations Act 2007*.

²⁰ That nomination was subsequently deemed to have been made out of time, by the COPE Organisers.

proposition that both reports were prepared by her, but that the findings were to be presented after finalising the details with Mr Valenitabua.

Executive Meeting of 14 October 2016

29. Ms Powell was shown the Minutes of the Executive Meeting dated 14 October 2016²¹ and told the Tribunal that all issues were canvassed by the members at that meeting. In her evidence, Ms Powell stated that she did not advise the Executive members at that meeting, that she had not had an opportunity to seek the views of Mr Nakaora. The witness confirmed that the Executive Committee did not consider the Grievor's response, on the basis that they had been advised that the Board of Inquiry findings were enough. In any event, Ms Powell restated that the President had refused to show its members, the response from the Grievor. Ms Powell told the Tribunal that the Executive Committee had the power to terminate the Grievor. The witness said that the communication to the Grievor indicated that there was a right of appeal against the termination decision, but did not think that such right was allowed to be entertained²². Ms Powell said she was at the subsequent Annual General Meeting of members, but that the issue of Mr Nakaora's termination did not come up and the Executive never discussed, whether or not the appeal was ever allowed to be entertained.
30. During cross examination, Mr Valenitabua took the witness to the employment contract and the conditions pertaining to his duties and responsibilities. The witness was thereafter taken to the various loan transactions of the Grievor and explained the policy pertaining to Member borrowing and the limitations imposed, based on equity within the scheme. The witness was taken through various documents dealing with the verification of loan approvals and expenditure incurred by Mr Nakaora in his capacity as General Secretary²³. The Tribunal asked of the witness, who was the Group Accountant who should have signed the payment forms and was advised that it was Mr Nemani Davui who was the Acting Group Accountant. The witness then indicated that he was the Assistant Internal Auditor of the Association²⁴.
31. In relation to the documentation before the Tribunal, Ms Powell clarified that Mr Nakaora was charged with the responsibility for managing the daily operations of the Union funds. She agreed with Counsel insofar as the Grievor had not been faithful to his calling as an employee and the responsibilities that went with his role. One issue that was raised by the witness dealt with the manner in which the Grievor had approved certain building works that according to Ms Powell exceeded his financial authority as General Secretary. Ms Powell was asked to clarify the manner in which Ms Nanise Kamikamica, was overlooked by Mr Nakaora as being the person who should have been nominated as a candidate for election to the position of President, COPE.

²¹ See Folio 19 of the Employers Bundle of Documents.

²² As mentioned earlier, the Tribunal does not believe that any right of appeal against summary dismissal lies within Section 37(i) of the Constitution.

²³ Various documents contained within the Employer's bundle, were referred to within cross examination, that included Folios 47-55.

²⁴ This shows that there was no effective and rational set of governance arrangements in place. An internal auditor should not be signing documents in the capacity of the Company Accountant.

The witness was adamant that Mr Nakaora was not the endorsed preferred candidate of the FTA.

Alisi Wightman Award

32. The witness said that members of the Executive had discussed the importance of this COPE award prior to having reached the conference in Nadi. It was the intention of the Executive to nominate Ms Vuetaki on the basis of her contribution to the FTA Women's Network. According to the witness, Mr Nakaora did not promptly sign the nomination request for the FTA nominee and as a result the COPE organisers did not accept their nomination. Ms Powell was again asked to clarify the various acquittals and expenses of the Grievor, particularly in relation to issues such as COPE conference accommodation and meal allowances. The witness clarified that there appeared to be one set of rules applying to the General Secretary and another in relation to other members who sought to claim out of pocket expenses in order to attend the Conference. The witness told the Tribunal that having regard to the various financial statements, unapproved payment vouchers, and failures in relation to the approach adopted to the Women's Network Co-ordinator, that the Executive were content in the view, that the Grievor should be terminated in his employment.
33. On re-examination, the witness was asked by Mr Anthony, was she aware that the President of the FTA had taken over the responsibility for the day to day operations of the Thrift Co-operative? Ms Powell said that she could not answer that question and was not sure. Ms Powell said that the building improvements work that had been initially sought to be undertaken by the General Secretary in the amount of \$86,000, never proceeded. Ms Powell told the Tribunal that she did not know how the COPE election processes were conducted. The witness said that the nomination form for the Alisi Wightman award, had been sent to the Association some six months before the Conference Meeting and admitted to the fact that the Grievor did apologise later for the fact that it had not been submitted within the timelines required. In relation to the expenses associated with the hiring of a dance group to perform at a COPE dinner event, the witness confessed as to not knowing that an element of those costs was for the hire of a bus to transport the performers from Lautoka to Nadi. The witness also admitted to the Tribunal that whilst undertaking her investigations into the Grievor's dealing with matters involving the Thrift Co-operative, that she was not aware of the *Co-operatives Act 1996* governing its operations and the fact that it required the Co-operative to establish its own governance arrangements independent to that required by the FTA Constitution.
34. Ms Powell agreed that the President was not interviewed in relation to the inquiry concerning the operations of the Co-operative. The witness said that the President "told us that (the Grievor) doesn't know what he was doing (and that) we went back and told him that they needed to work things out". Ms Powell further stated, that "I didn't intervene". The Tribunal asked Ms Powell who was the Treasurer of the Association during the relevant time and whether or not that person was interviewed in relation to the financial management of the Association. The witness said that the Treasurer was Mr Semi Vela and advised that he had not been interviewed in relation to any of the issues. Ms Powell said, that "he should have been part of it

as well...(and that she) didn't look at whether he had signed cheques." The Tribunal raised with the witness, the contents of a document set out within Folio 73, that appeared to be a letter of complaint from a Ms Mere Bulewa in relation to the conduct of the General Secretary. Ms Powell told the Tribunal, that this document had been obtained from another member and that this complaint was not made personally to her.

Role of Womens Network Committee in Allegations and Inquiry

35. The Tribunal referred the witness to Folio 10 of the Employers Bundle, in which the preamble to the Board of Inquiry 2 was set out. In particular it was noted that at a meeting held on 5 September 2016, the Women's Network Committee having discussed the COPE Workshop Report, had concluded that Mr Nakaora was "deemed ..to be biased in his dealings with the Womens' Network Co-ordinators attendance to the said workshop". The witness agreed to the proposition that the "women's business got the ball rolling for the investigation."

Financial By Laws of Association

36. Mr Anthony referred the witness to Folio 73 of the Employer's Bundle, in which By-Law A1 makes it clear that the President shall be accountable for the strict adherence of the Association's financial operation and management of the financial provisions of the FTA Constitution and the FTA Financial By-Laws. Ms Powell accepted that this was the case.

Marika Uluinaceva

37. The final witness who was called to give evidence was the Principal Administration Officer, Mr Uluinaceva. The purpose of the Tribunal calling this witness, was to ascertain the payment arrangements that had been effected by the Association following the termination of the Grievor. The witness was first taken to the Executive Meeting Minutes dated 14 October 2016, in which it stated that Mr Nakaora would be provided at termination with one month's salary, with an additional three month stipend. The witness said that he referred this matter of processing the payment to the President, who in turn told him to "hold on" to payment on the basis that Mr Nakaora had lodged a dispute. The witness said that the Employer had also decided to withhold the payment of the accrued annual leave entitlement. Mr Uluinaceva told the Tribunal that he was not part of the investigating team, but was part of the Executive Meeting when the decision to terminate the Grievor was made. The witness stated that he had abstained from voting in relation to that issue. The witness was taken to Attachment A to the Affidavit of Marika Uluinaceva filed on 28 August 2017, where it had identified an internal appeal system was available to the Grievor in which to contest the dismissal decision²⁵. The witness agreed that despite the request being made by the Grievor on 7 August 2017, that no such agenda item was

²⁵ See Ex Tempore decision of the Tribunal dated 18 September 2017 in relation to the validity of that process and whether it was relevant to the circumstances of this case.

put to the Annual General Meeting of members. Mr Uluinaceva confirmed that the payments consistent with the decision of the Executive on 14 October 2016 were subsequently made.

Was the Dismissal of the Grievor Justified?

38. There are two primary reasons set out within the Statement of Reasons of Summary Dismissal that was issued to Mr Nakaora on 15 October 2016. They are:-

- Misappropriation of funds, abuse of office and dishonesty; and
- Insubordination and Conflict of Interest.

39. There is no evidence of misappropriation of funds, abuse of honesty, nor dishonesty. There is however, an impression provided throughout the evidence of a lack of regard shown by the Grievor to financial procedures, a less than appropriate application of 'arms-length' transactions and excessive expenditure of Association's funds, on personal travel and accommodation claims. Much though of these later issues, appeared to have been sanctioned by the former President. The evidence suggests that Mr Nakaora enjoyed the perquisites of office and on occasions these appeared to have been excessive, given the obvious need to remain accountable to the Membership and exercise some level of moderation in the role. These issues could have easily been addressed with the General Secretary and could have been arrested quite quickly. After the first warning issued to the General Secretary in December 2015, these further complaints only appeared to come to the surface in response to an obviously concerted effort by some members of the Women's Network Committee to 'retaliate' against what they perceived to be unfair treatment by the Grievor in the discharge of his duties. There were other clear signs of a 'sloppy' and less than arm's length dealing by the Grievor in relation to his role as either Chairperson or as a board member of the FTACL. Whilst the evidence did not show any occasion when the Grievor approved his own loan, it would seem that from an administrative point of view, there were occasions when he had to approve the release of funds into his own account and there is prima facie evidence that this happened on occasions, before the appropriate documentation had been fully executed²⁶.

40. The issue regarding the COPE Presidency, was also one that demonstrated the former General Secretary's poor reading of the FTA organisation and modus operandi. In the case of the nomination for Presidency, whilst the Grievor may argue that he was nominated by another member organisation, he could have sought the views of those other Executive Members, to ascertain whether there were any objections to him, accepting such an endorsement. The Tribunal nonetheless does not accept that the work load associated with the Presidency would have significantly hampered the Grievor's undertaking of duties as the General Secretary of the FTA, however he was still accountable to the Executive and the Members and the issue was one that he should have sought to clarify. The Tribunal does not accept that the grounds of dismissal pertaining to misappropriation of funds, abuse of office and dishonesty have been made out. Yes, it is accepted that perhaps the Grievor had not provided expense receipts to support some of the acquittals that had been provided, but that does not mean that he had "pocketed" monies, only that he had not been chased up for the receipts as required. The Association's Treasurer and President had responsibility for the protocols and procedures that governed

²⁶ Though the difference seems to be in one or two days only and may have been explained for other reasons not explored by either party.

financial operations; clearly they had failed in their oversight duties. In fact, there are many examples of where the Association's administrative procedures appeared to be quite ad hoc.

41. The Tribunal is also not of the view that the former General Secretary had been insubordinate or demonstrating conduct that gave rise to a conflict of interest. Having said that it is acknowledged that he had offered himself up for an Honorary position and that he had not sought the views of his Employer before-hand. This was not a position he undertook in a private capacity. The Grievor could only assume this role, on the basis of his position as a senior representative of the Association. The acceptance of the nomination showed a lack of judgement, but cannot be characterised as a conflict of interest.

42. In *Kumar v Nanuku Auberge Resort Fiji*²⁷, this Tribunal stated:

As a starting point, at least in the context of 'unjustifiable dismissal', the question needs to be asked, having regard to the Statement of Reasons provided, whether a termination based on those reasons was justified. The question post Central Manufacturing v Kant, where a new regulatory regime is installed, must be, Can the dismissal be justified? The initial question to ask is not how the dismissal takes place, or what is relied on as part of that process, but whether the reasons for giving rise to the decision to terminate are justifiable. The concept of whether or not a termination or dismissal²⁸ at work is justified or not, has been enshrined in international labour law for many years. The Termination of Employment Convention, 1982 (No. 158) adopted at the 68th International Labour Convention session in Geneva, sets out within Part II, Division A, a framework for assessing whether or not a dismissal is justified. Article 4 for example, provides that "The employment of a worker shall not be terminated unless there is a valid reason for such termination concerned with the capacity of conduct of the worker or based on the operational requirements of the undertaking, establishment or service. Articles 5 and 6 thereafter provides additional illustrations of circumstances that would not constitute a valid reason for termination. These include union membership, filing a complaint or participating in proceedings against an employer, discriminatory grounds based on attribute, absence due to maternity leave or temporary absence from work because of illness or injury.

*Northrop J in Selvachandran v Peteron Plastics,*²⁹ provided the following clarification when a comparable question was being asked as to whether a termination decision was a valid one. In that case, his Honour stated:

Subsection 170DE(1) refers to "a valid reason, or valid reasons", but the [Act](#) does not give a meaning to those phrases or the adjective "valid". A reference to dictionaries shows that the word "valid" has a number of different meanings depending on the context in which it is used. In the Shorter Oxford Dictionary, the relevant meaning given is "Of an argument, assertion, objection, etc; well founded and applicable, sound, defensible: Effective, having some force, pertinency, or value." In the Macquarie Dictionary the relevant meaning is "sound, just, or well founded; a valid reason."

²⁷ [2017] FJET 2

²⁸ The use of the word dismissal may or may not have negative connotations to it and so is used in a similar way to termination for these purposes.

²⁹ See [1995] IRCA 333;62 IR 371 at 373

In its context in subsection 170DE(1), the adjective "valid" should be given the meaning of sound, defensible or well founded. A reason which is capricious, fanciful, spiteful or prejudiced could never be a valid reason for the purposes of subsection 170DE(1). At the same time the reason must be valid in the context of the employee's capacity or conduct or based upon the operational requirements of the employer's business. Further, in considering whether a reason is valid, it must be remembered that the requirement applies in the practical sphere of the relationship between an employer and an employee where each has rights and privileges and duties and obligations conferred and imposed on them. The provisions must "be applied in a practical, commonsense way to ensure that" the employer and employee are each treated fairly, see what was said by Wilcox CJ in Gibson v Bosmac Pty Ltd, 5 May 1995, unreported, when Considering the construction and application of section 170DC.

...the concept of what constitutes a justifiable decision within the meaning of Section 230(2) of the Promulgation, could well canvas such concepts as to whether the dismissal decision was sound, defensible or well founded; not capricious, fanciful, spiteful or prejudiced.

43. The Tribunal does not see the justification in the dismissal. The Grievor should have been sanctioned and possibly issued with a final warning by the Employer. Yet, it needs to be reminded that this is a senior role and there is also a need in such cases, to expect more from the leader of an organisation. There was clearly a level of frustration within the Association and a concerted effort by some to see that the Grievor would be terminated in his role. The process adopted by the Employer, appeared to be quite arbitrary and less than fair. It is amazing that an Association that fights for the rights of its members, would show such blatant disregard to the very same principles of workplace justice, when investigating the conduct of the Grievor. The fact that the Grievor's response to the allegations of misconduct was not given to the Investigating Committee, nor that they interviewed either the President or Treasurer, were significant illustrations of such unfairness. The Tribunal does not accept that the dismissal was justified, albeit that the conduct of the Grievor was demonstrating tendencies of self-interest and entitlement.

The Question of Unfairness

44. In *Josifini Lagi v Nadi Town Council*³⁰ this Tribunal stated:

*The question of whether the dismissal was fair in my mind is quite clear.The issue is whether in carrying out the dismissal, the Employer acted in a manner that was harsh, aggressive, humiliating, degrading , embarrassing, or in a manner that otherwise causes humiliation, bad repute and injury to the feelings of the worker.*³¹

45. In his evidence, the Grievor told the Tribunal that on the day of his dismissal that three members of the Executive attended his family home in order to advise of the decision. They were, Messrs Semi Vela, Joeli Bule and Netani Drauvesi. This would have been a very humiliating experience for the Grievor. Mr Nakaora was a former Deputy Head of one of the country's most prestigious schools. The Grievor was entitled to respect and was entitled to be dealt with in a manner that was not degrading or capable of causing humiliation and embarrassment. Why did the delivery of a dismissal letter, require three persons to attend the Grievor's home? Further, the Employer

³⁰ ERT Grievance 173 of 2016; [2017] FJET 7; ERT Grievance 173.2016 (27 March 2017)

³¹ See *Yanuca Island Limited trading as Shangri Law Fiji Resort and Spa v Vani Vatuinaruku* [2017] FJHC92 at [61].

should not have withheld the final pay and accrued entitlements due to the Grievor. This was simply vindictive and in the case of the annual leave at least, unlawful. A trade union should know much better. The Tribunal believes that consistent with the decision in *Yanuca Island*, that the dismissal was unfair.

Conclusions and Other Issues

46. Within the Employer's Closing Submissions it is alleged that the Employer was guilty of gross misconduct for the purposes of Section 33 of the Act, however provides no case law in support of that proposition³². The statutory test requires that the misconduct is of a sufficiently serious nature that would entitle the Association to regard the contract of service to be at an end³³. As mentioned earlier, the best evidence can only amount to very poor administrative practices within an organisation. The President of the Association was accountable for the strict adherence to the financial and operational management of the Association. The Treasurer was the financial controller. Both of these roles and responsibilities are clearly set out within the *FTA Financial By Laws 2013-2015*. The General Secretary was to some extent reliant on these persons to put in place proper procedures and instructions, for how he was to undertake his role. Keep in mind the Grievor was a former educator, not a financial administrator.
47. While the Grievor demonstrated a lack of judgement in obtaining an unsecured motor vehicle loan from the FTACL and had been issued with a warning from the President, writing to him in the capacity as Chairman FTACL, some of the arrangements identified and separation of responsibilities between the FTACL and the FTA remain less than clear. Little effort had been made by either party to isolate the distinct legal arguments in this regard. Be that as it may, the Tribunal accepts that the Grievor may not have had the requisite skills to look after the day to day affairs of the Co-operative.

Appropriate Compensatory Remedy

48. Within the *Final Submissions on Behalf of the Grievor*³⁴ it is submitted that the primary remedy being sought is reinstatement. The Tribunal does not think that this is an appropriate remedy in the circumstances. The Association at one level is administered by a small number of persons and the capacity to have the former General Secretary return into his role, particularly against the length of time that has already past, seems to render such a proposal undesirable. As a result, compensatory damages should instead be awarded. In this regard, there are a variety of considerations that can be relied upon where it has been established that a Grievor has been unjustifiably dismissed in employment³⁵. These would include: the length of service with an employer; the likely remuneration received if the employment had continued; attempts made to mitigate any loss of income; any other income received by the Grievor prior to any decision being reached by the Tribunal; the capacity of the employer to pay; and any other special features of the case.

³² It is nonetheless noted that the Employer did rely on the decision of *Yanuca Island* within its Preliminary Submissions.

³³ See *Shell Fiji Ltd v Johnson* [2010] FJCA 52, ABU0012.2009 (23 September 2010).

³⁴ Received 31 January 2018.

³⁵ See *Peni Koro Lagi v Calm Fire Professionals*, [2018] FJET 4; ERT Grievance 183 of 2017 (4 January 2018)

49. In *Rentokil Initial Ltd v Kean*,³⁶ Wati J identified the primary considerations that a Tribunal must take into account, when formulating a view as to the appropriate compensation to be awarded, as being:-

- (a) the employer's conduct in the mediation and the progress of the case.*
- (b) the delay caused by the employer.*
- (c) whether the employer should take responsibility for the delay in the determination.*
- (d) the employee's employment status since termination.*
- (e) whether the employee mitigated his loss.*
- (f) the conduct of the employer hindering the employee from mitigating the loss and*
- (g) any other relevant factors.*

50. The Grievor was in receipt of a base salary of \$54,607 per annum and in addition to that was paid an annual transport allowance; a housing allowance and gratuity. The total annual remuneration can be valued at \$77,207.00 per annum. The Tribunal is aware that the Employer has already paid to the Grievor an ex gratia amount of three month's salary, on 29 May 2017³⁷. The Affidavit of Mr Marika Uluinaceva, also attests to the fact that the former General Secretary was also paid one month's wages at termination, though in his evidence in chief, Mr Vela indicated that the payment was stopped by the President³⁸. Clause 17 of the Employment Contract entered into between the parties dated 4 September 2015, provides a termination clause that would in ordinary circumstance allow the release of the Employee by the payment of six month's wages equivalence, with an additional one month being paid for each year of service.

51. At the time of termination, the Grievor had only accumulated approximately 14 months' worth of service with the Association. Based on that arrangement, a fair outcome in these circumstances would be that as a starting point, the Grievor be entitled to 7.2 months wages. It is acknowledged that the Grievor has been paid \$3743.02 on 15 October 2016, as well as a further amount of \$9,247.12 on 29 May 2016. The method for calculating these amounts is somewhat hard to ascertain from the materials provided. Based on the gross annual remuneration of \$77,207.00, the calculation of 7.2 months wages would equate to approximately \$46,324.00. This amount would need to be discounted against the sum of \$12,990.14 already paid. The residual amount is equal to a gross salary payment of \$33,333.86. In addition to this amount, the Tribunal intends to award the further sum of \$5,000.00, for the hurt and humiliation that clearly was caused by the way in which the dismissal came about and for the fact that the Employer unlawfully withheld the monies otherwise due to the General Secretary at termination. The total compensation to be paid to the Grievor is set at the amount of \$38,333.86.

52. In addition, the Tribunal will summarily assess the costs incurred by the Grievor and his representatives in the amount of \$4,000.00. The case was one that should have resolved between the parties a long time ago. What was required was an independent evaluation of prospects against the evidence and the process that had been adopted by the Employer. Often this is difficult to take place by the legal representative acting for one of the parties, when that

³⁶ [2013] FJHC 193; ERCA 6.2011 (17 April 2013)

³⁷ This amount was represented as \$9,247.12.

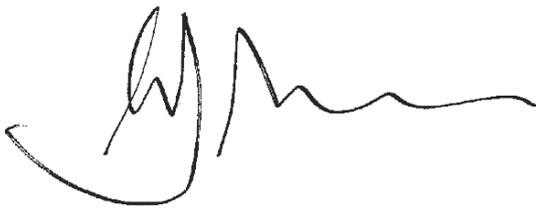
³⁸ If that payment has not been made, then no offsetting of that amount can take place and the maximum compensation of \$40,000.00 will be awarded to the Grievor.

person has been so actively involved in advising on the merits of the dismissal and the execution of the same, in the first instance.

Decision

53. It is the decision of this Tribunal that:-

- (i) The Grievor has been unjustifiably and unfairly dismissed in his employment.
- (ii) That compensation in the amount of \$38,333.86³⁹, should be paid to the Grievor within 28 days hereof.
- (iii) That costs in the sum of \$4,000.00 be paid to the Grievor within 28 days hereof.



Mr Andrew J See
Resident Magistrate

³⁹ Note as mentioned above, this amount will be varied to \$40,000.00, if it is the case that the Employer did not make the one month's wages payment, as had been identified within the Affidavit of Mr Marika Uluinaceva dated 28 August 2017. The parties are to notify the Registry urgently in relation to this issue, in order that an appropriate Order can be issued.