

3. A fundamental part of the proceedings, was in the examination of CCTV video footage in the possession of the Employer, that covered a time period on 12 September 2017, in which it was understood the relevant conduct giving rise to the Grievor's dismissal took place.
4. As the transcript of proceedings will show, this process was undertaken in an environment designed to isolate and explore the issues and to consider against that, the Grievor's account for the relevant behaviour. In that regard, the Tribunal took into account, the Summary Report as provided by the Disciplinary Inquiry dated 29 November 2016; a signed statement provided by the Grievor dated 26 September 2016 (MF11) and responses provided during today's conference from the Grievor himself.
5. At the conclusion of that process, the Tribunal asked the parties to go off the record, in order that it could explore whether or not this was a matter that could be resolved by agreement. During the course of that process, Mr Tunidau of Counsel indicated that he believed that the Tribunal had already formed a view as to the culpability of his client and that he wished the matter to proceed to formal arbitration. The Tribunal asked that the recording of proceedings be recommenced.
6. This Tribunal has previously made it quite clear to the parties, that it will not advance any grievance to a full scale arbitral process, until such time as it is clear that a more preferred strategy for resolving the grievance is explored. Mr Tunidau, asked on that basis that the Tribunal recuse itself from the further determinative of this matter, for an apparent bias. The Tribunal refused to do so.

Conclusions of the Tribunal

7. The Tribunal has made it clear to the parties that there would appear to be a prima facie case of misconduct against the Grievor. As the CCTV footage made clear, the Grievor is seen for approximately 6 minutes concealed behind a consignment stack, where he can provide no logical reason for his conduct. In fact the transcript of proceedings, when considered against the video footage, reveals behaviour that simply is suggestive of the misconduct that the Employer ultimately found against the Grievor warranting his dismissal.
8. It was for that reason and in the interests of dealing with the grievance in the fairest and most expeditious manner possible, that the Tribunal reinforced to the parties, its concern that the case of the Employer appeared a strong one and that without any more from the Grievor, would likely be made out.
9. As a result of that finding, the Grievor and his Counsel retired from the proceedings and Mr Tunidau indicated that he would wish to challenge the manner in which the Tribunal has conducted the conference proceedings. There is no immediate benefit to be had by detailing further any of the claims made, suffice to say that the Tribunal itself has serious concerns about various matters that it will articulate at the appropriate time.
10. Parties to proceedings where it is highly unlikely that reinstatement will be a remedy option, need to adopt practical and realistic positions in the way in which compensation outcomes should then be pursued. Invariably an outcome achieved by way of conference or agreement

between the parties, will yield a result, quite comparable to that which will come about through arbitral proceedings, that are often expensive and unnecessarily complicated. To make the point Section 210(1) of the *Employment Relations Act 2007* refers to the power of the Tribunal to adjudicate and determine employment grievances and disputes. There are clearly several options available to the Tribunal in this regard. Section 210(2) of the Act, refers to the powers of the Tribunal to assist parties to settle the matter. In all proceedings however, they must be undertaken fairly.¹

11. In the present case, the Tribunal believes that this is matter that should be settled amicably between the parties.

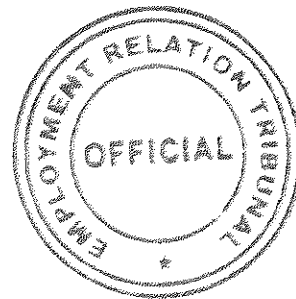
12. Based on the information before the Tribunal as identified above, particularly in relation to the conduct that forms the basis of the dismissal, the case against the Grievor appears compelling. That is not to say that there may not be other factors that at this juncture are not known to the Tribunal, however in response to the particular conduct, they were not forthcoming during the course of the determinative conference. It is highly unlikely that they will arise with the effluxion of more time.

Recommendation

13. It is recommended that the Grievor and the Employer confer in a bid to settle this matter amicably. In the event that this does not take place within 28 days hereof, the Tribunal will relist the matter for the reconvening of the conference proceedings, that may include the taking of further evidence, before otherwise adjudicating upon or determining the grievance.



Mr Andrew J See
Resident Magistrate



¹ See Section 216(2) of the Act.