

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



## Decision

**Title of Matter:** National Union of Workers (Applicant)  
v  
Fiji Sugar Corporation (Respondent)

**Section:** Section 211(1)(i) Employment Relations Promulgation

**Subject:** Referral of dispute: Adjudication of a question connected with the construction of a provision of the Act

**Matter Number:** ERT Dispute No 34 of 2016

**Appearances:** Mr F Anthony, for the Applicant  
Ms M Lord, for the Respondent

**Dates of Hearing:** 7 April 2017

**Before:** Mr Andrew J See, Resident Magistrate

**Date of Decision:** 9 February 2018

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**KEYWORDS: Employment Relations Act 2007; Dispute of Interest; Trade Dispute; Essential Service and Industry; Dismissal of Employee; Time Limit for Lodging Employment Grievance.**

**CASES CONSIDERED:**

*Ooms v Chief Mediator* [2017] FJET 23; ERT Misc Application 23.2017 (30 November 2017)

### Background

1. On 26 October 2016, the Permanent Secretary notified the parties that she had accepted an employment dispute lodged by the Applicant in relation to the summary dismissal of Ms Mere Jiki. That dispute was referred to this Tribunal, in accordance with Section 170(2)(a) of the *Employment Relations Act 2007*.<sup>1</sup>

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<sup>1</sup> It is noted that the referral was purportedly to be on the basis that the dispute relates to interpretation, application or operation of an employment contract.

2. It is noted that that by an earlier Order issued by the Chief Tribunal on 11 July 2016, that it was determined that the Respondent Employer was an “Essential Services Industries employer” for the purpose of *Part 19* of the *Employment Relations Act 2007*. If that is the case, then the Employer contends that a dispute pertaining to the dismissal of an employee, can only be dealt with in accordance with Section 188(4) of the Act.
  
3. Further, the Respondent Employer is of the view that a dispute initiated by the Union within the context of an essential services industry employer, would ordinarily take the form of a ‘trade dispute’ and would therefore be one that should otherwise be dealt with by the Arbitration Court. It is submitted within the Submission of the Employer, that in cases where a ‘dispute of right’ such as a dismissal grievance exists, that this should therefore be processed by the Union on behalf of the employee, within 21 days.
  
4. The Applicant Union submits that the dispute was lodged with the Ministry of Labour on 3 October 2016. This would mean that the dispute was lodged 47 days following the dismissal decision.

#### **The Effect of Part 19, Essential Services and Industries**

5. As was indicated in the case of *Ooms v Chief Mediator*,<sup>2</sup> Section 188(4) of the *Employment Relations Act 2007* was inserted into the legislation by way of statutory amendment on 11 September 2015.<sup>3</sup> That amendment introduced special arrangements for dealing with disputes of interest and grievances in the case of designated essential services and industries. The amendment also repealed the *Essential National Industries (Employment) Decree 2011*. The parties accept that Fiji Sugar Corporation is an employer who employs persons within an essential service and industry and on that basis, must submit to the Arbitration Court, rather than the Employment Relations Tribunal or Employment Relations Court, in relation to trade disputes as defined for the purposes of the Act.
  
6. In the case of essential service and industry employers, the jurisdiction of the Employment Relations Tribunal, the Employment Relations Court and the Arbitration Court, insofar as each of these entities are able to deal with matters over trade disputes and employment grievances, is set out within Section 188 of the Act as follows:

*188.—(1) All trade disputes in essential services and industries shall be dealt with by the Arbitration Court in accordance with this Part.*

*(2) The Employment Tribunal and the Employment Court established under [Part 20](#) shall not have any jurisdiction with respect to trade disputes in essential services and industries.*

*(3) For the avoidance of doubt, [Part 20](#) shall not apply to essential services and industries, except as provided under subsection (4).*

*(4) Any employment grievance between a worker and an employer in essential services and industries that is not a trade dispute shall be dealt with in accordance with [Parts 13](#) and [20](#), provided however that any such employment grievance must be lodged or filed within 21 days from the date when the employment grievance first arose, and—*

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<sup>2</sup> [2017] FJET 23; ERT Misc Application 23.2017 (30 November 2017)

<sup>3</sup> See *Employment Relations (Amendment) Act 2015*

*(a) where such an employment grievance is lodged or filed by a worker in an essential service and industry, then that shall constitute an absolute bar to any claim, challenge or proceeding in any other court, tribunal or commission; and*

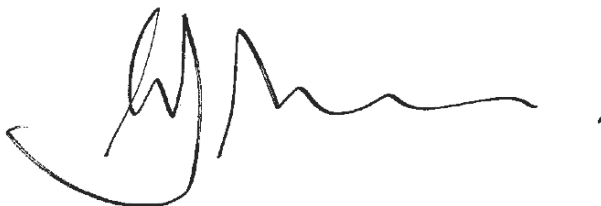
*(b) where a worker in an essential service and industry makes or lodges any claim, challenge or proceeding in any other court, tribunal or commission, then no employment grievance on the same matter can be lodged by that worker under this Promulgation.*

7. The dispute in relation to the dismissal of Ms Jiki, cannot be a 'trade dispute' as defined within Section 185 of the Act, on the basis that it deals with a dispute of rights regarding the dismissal or termination of any worker.<sup>4</sup> On that basis, the dispute that was notified by the Union, must be an 'employment grievance' as that term is defined within Section 185, as it is given the meaning of a grievance involving dispute of rights. As Section 188(4) of the Act makes clear, any grievance not a trade dispute shall be dealt with relevantly, in accordance with Part 13 or Part 20 of the Act. That is, the dispute is either referred to the Tribunal and dealt with in accordance with Part 13, or referred to the Mediation Service and dealt with under Part 20. In this case, the Permanent Secretary has referred the dispute to the Tribunal, because the 'dispute' as filed, "relates to interpretation, application or operation of an employment contract"<sup>5</sup>. Yet in the present case, Ms Jiki's contract of employment is at an end. The Tribunal does not have any power to consider the interpretation, application or operation of an employment contract in the case of a National Essential Service and Industry Employer, other than within the confines of Part 13 of the Act, where it is dealing with an employment grievance. For a valid employment grievance to be made in the case of an Essential Service and Industry Employer, requires the grievance to be lodged or filed within 21 days. The application by the Union on behalf of its member, was done some 26 days out of time. There is simply no capacity for the Tribunal to deal with an employment grievance of this type, when it is made out of time. The Tribunal has no jurisdiction to deal with the matter. The referred employment dispute cannot be entertained and must be dismissed.

### **Decision**

It is the decision of this Tribunal that:-

- (i) The employment dispute must be discontinued on the basis that the Tribunal has no power to deal with the matter.



**Mr Andrew J See**  
**Resident Magistrate**

<sup>4</sup> See exclusion of those categories of case within the definition of "dispute of interest" within Section 185 of the Act.

<sup>5</sup> See Section 170(4)(a) of the Act.