



Employment Relations Tribunal

Decision

Title of Matter: Basant Kumar
v
Outrigger on the Lagoon

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

Subject: Adjudication of Grievance Arising Out of Dismissal

Matter Number: ERT Miscellaneous Application No 01 of 2016

Appearances: Mr C de la Mare, for the Grievor
Mr V Singh, Parshotam Lawyers, for the Employer

Date of Hearing: Hearing on the papers

Before: Mr Andrew J See, Resident Magistrate

Date of Decision: 21 August 2019

KEYWORDS: Discontinuance of proceedings, Recommencement of action in the Employment Relations Court

Cases Considered

Basant Kumar v Outrigger On the Lagoon, Korotogo, (ERT Misc. Application No 01 of 2016 (4 September 2018)).

Background

[1]The Grievor was dismissed in his employment on or around 11 July 2014, for the alleged theft of paint, the property of his employer. It would seem that despite the initial attempts by the Grievor to have his grievance dealt with by the Mediation Service, this did not occur, on the erroneous assumption by the Mediation Service, that any criminal proceedings firstly needed to be addressed in the criminal court¹. As a consequence, the Chief Tribunal granted the Grievor an extension of time for him to file his grievance and requested that this Tribunal deal with the matter in accordance with Section 111 (4) of the *Employment Relations Act 2007*. When the grievance first came before this Tribunal, the Grievor's representative was made to understand

¹ Note findings of Kuruduadua CT in *Basant Kumar v Outrigger On the Lagoon, Korotogo*, (ERT Misc. Application No 01 of 2016 (4 September 2018)).

that this Tribunal had a jurisdictional warrant to deal with matters up to \$40,000.00² only. As a result, Mr de la Mare as the Grievor's representative, requested that the Tribunal transfer the matter to the Employment Court, however it was made abundantly clear to him that no such power existed for such a transfer to take place. The consequence of all of this, was that in light of the fact that the Grievor was seeking a compensation remedy in excess of \$40,000.00, that he filed a Notice of Discontinuance in Proceedings on 21 May 2019. It is as a result of the discontinuance, that the Employer now seeks to pursue costs against the Grievor for costs expended unnecessarily.

[2]The power to award costs is found at Section 236 of the Act and the underlying premise is that the Tribunal act reasonably in the exercising of its discretion. In this case, regardless of whether as the Grievor says, the Employer did not wish to submit to mediation, the fact remains that the Tribunal had capacity to deal with the grievance by virtue of Section 111(4) of the Act. The fact that it was the Grievor himself who sought to abandon his grievance and pursue a different proceeding in the Employment Court, is a matter entirely of his own doing.

[3]As was explained to Mr de la Mare, the statutory pathways that are provided by the legislation for dismissed workers seeking to pursue remedies against termination of their employment, are quite distinct. There is no overlap. The election as to which pathway, if any, a dismissed worker needs to take, comes about at that time when a worker is either wishing to have the matter advanced as a grievance and submit to the mediation process and if unsuccessful, the statutory threshold of the Tribunal, or proceed independently in the Employment Relations Court. A Part 13 Employment Grievance, is not a pre-requisite for the commencing of action in the Employment Relations Court, in the case where a worker is claiming that she or he has been unjustifiably or unfairly dismissed.

[4] The question remains, would the Employer have had to expend the costs of interlocutory proceedings, had the Grievor not sought to make an application to have his grievance entertained out of time. The answer would most likely be no. Those costs were nonetheless absorbed by the parties at the time that decision by the Chief Tribunal was made. The Grievor had been successful in his application in that regard. Outside of that though, any further costs incurred by the Employer in the circumstances of this case, have been expended unnecessarily. This is not a case where the Grievor was without representation.

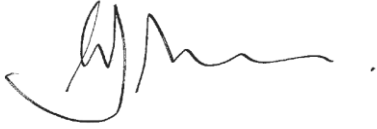
[5]There are cost consequences of commencing and then discontinuing proceedings and in the case where the Grievor is being represented, such costs where unnecessarily incurred, should be met by the offending party, in this case the Grievor. The Tribunal finds that the Grievor when represented, albeit by a non-registered practitioner, should make some contribution toward the total costs incurred by the Employer in the commencement of proceedings. If the Grievor did not want to be limited to a jurisdictional compensation limit of \$40,000.00, then the application for an extension of time should never have been made. A sum of \$3,000.00, inclusive of legal costs in this application, are seen as appropriate in the circumstances.

² See Section 211(2) of the Act.

Decision

[6] It is the decision of this Tribunal that:-

- (i) The Grievor pay to the Employer costs in the sum of \$3,000.00 within 28 days.
- (ii) An Order to give effect to this decision will be issued to the parties.



Andrew J See
Resident Magistrate