

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

ORIGINAL JURISDICTION

CASE NUMBER: ERCC 7 OF 2016

BETWEEN: **RITESH SINGH**

PLAINTIFF

AND: **FIJI REVENUE AND CUSTOMS AUTHORITY**

DEFENDANT

Appearances: *Plaintiff in Person.*

Mr. D. Sharma for the Defendant

Date/Place of Judgment: *Tuesday 24 September 2019 at Suva.*

Coram: *Hon. Madam Justice Anjala Wati.*

A. Catchwords:

Employment Law – Whether the claim against the defendant being an essential service and industry brought within the time limit prescribed by the legislation – claim time barred – there being no provision for any extension of time, the claim cannot continue – claim struck out.

B. Legislation:

- 1. The Employment Relations Act 2007 (“ERA”): ss. 111; 185; and 188.*
- 2. Fiji Revenue and Customs Authority Act 1998: s. 3.*

Cause/Background

1. On 14 June 2016, the plaintiff filed a claim against its former employer, the defendant claiming damages for unlawful and unfair termination carried out on 13 June 2014.

2. The matter was initially set for hearing on 29 October 2018. The hearing proceeded, however, in the middle of the trial, whilst the plaintiff was giving evidence; it became apparent that his claim needed an amendment.
3. Mr. D. Sharma appearing for the defendant conceded that the plaintiff be allowed further time to amend his claim since he was unrepresented.
4. After the pleadings were amended, the matter was then set for hearing on 17 July 2019. The matter proceeded to hearing and again in the middle of the trial; Mr. D. Sharma realized that the claim was out of time in that it was not filed within 21 days as required by s. 188(4) of the ERA.
5. He therefore argued that since the claim was filed out of time; the matter cannot proceed any further and should be struck out. The plaintiff was given an opportunity to address the issue raised by the Mr. Sharma.

Law and Determination

6. The issue therefore before the court is whether the claim by the plaintiff is filed out of time and as such cannot proceed.
7. Part 19 Division 2 is a provision that covers employment grievances against essential services and industries. The defendant undoubtedly is an essential service and industry since it is a statutory body constituted under s. 3 of the Fiji Revenue and Customs Authority Act 1998. S. 185 of the ERA states that a statutory body is included as an essential service and industry.
8. Since the defendant is an essential service of the State, the provisions that apply to employment grievances against it, is Part 19 Division 2 of the ERA. To decide whether the claim has been brought within the time limit prescribed by the law, I have to cast my mind to s. 188(4) of the ERA which reads:

“Any employment grievance between a worker and an employee in essential services and industries ... 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-...”

Underlining is Mine

9. The claim that is brought by the plaintiff is filed after two years from the date when the grievance first arose. The claim is clearly time barred under s. 188(4) of the ERA.
10. The plaintiff's argument that it raised the grievance with the employer within 2 days does not assist his case as the term lodging and filing is in reference to lodging and filing the case in Court.
11. Further, the plaintiff's argument that it has 6 months' time under s. 111(2) of the ERA to submit the grievance to the employer is not applicable to this case nor does the provision for extension of time to file the claim.
12. S. 111(2) is for those employees who require the employer to resolve the grievance internally. The provision has no bearing on the time limitation within which a claim must be filed against an employer, being an essential service and industry, in a tribunal or a court.
13. This claim, I reiterate, is against an essential service. One of the purposes of Part 19 is to ensure that disputes against essential services and industries are filed and determined early so that the operation or functioning of the services and industries are not hindered by delays.
14. Under the specific provision covering employment grievances against essential services and industries, there is no provision for extension of time to bring a claim and as such I find that the general provisions for extension of time under any other provisions of the law in the ERA or any other written law does not assist the plaintiff.

15. On the question of costs, I find that it will be unjust and inequitable to order costs against the plaintiff as he is unemployed and his cause could not be determined by late filing of the matter. He has not been able to vindicate his rights due to the delay in filing of the claim. That does not equate to exonerating the employer from the claim. In the circumstances, an order for each party to bear their own costs is just and fair.

Final Orders

16. I find that the claim is not filed within the time limitation prescribed by s. 188(4) of the ERA and as such it cannot proceed to continuation. The claim shall, and I so order it to be struck out.

17. I order each party to bear their own costs of the proceeding.



Anjala Wati
Anjala Wati

Judge

24. 09.2019

To:

1. *Plaintiff.*
2. *R. Patel Lawyers for the Defendant.*
3. *File: ERCC 7 of 2016.*