

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

ERCA 9 of 2019

BETWEEN : **BAITUL MOTORS LIMITED**

APPELLANT

AND : **LABOUR OFFICER**

RESPONDENT

BEFORE : **M. Javed Mansoor, J**

COUNSEL : **Mr. V. Chandra for the Appellant**
Ms. L. Waqabaca for the Respondent

Date of Hearing : **25 February 2022**

Date of Judgment : **28 November 2023**

JUDGMENT

EMPLOYMENT LAW

Appeal – Unpaid wages – Whether offence statute barred – Sections 247 & 262 of the Employment Relations Act 2007

1. The appellant was charged in the Employment Relations Tribunal for non-payment of wages to several workers amounting to \$6,106.40. By its determination of 25 July 2019, the tribunal imposed a fine of \$500.00 to be paid within 21 days. The tribunal also ordered the appellant to make payment of the wages in default. This appeal is against the tribunal's determination.
2. Prior to filing charges against the appellant, the labour office sent the appellant letter dated 10 March 2015 calling for settlement of the wages due to the workers within 14 days. The dues concerned their unused annual leave. As there was no settlement of the dues, the labour office sent the appellant a letter of demand dated 8 August 2015 demanding payment of the sum of \$6,106.40 within 7 days. Another demand was issued on 3 December 2015.
3. The appeal is based on the following grounds:
 - a. "That the Employment Relations Tribunal erred in law in failing to consider that the Respondent's claim was statute/ time barred pursuant to section 262 of the Employment Relations Act 2007.
 - b. That the Employment Relations Tribunal erred in law and in fact in determining that the Appellant failed to maintain proper records for leave when in fact there was no charge of failure to maintain proper records filed against the Appellant.
 - c. That the Employment Relations Tribunal erred in fact and in law in failing to consider that the Demand Notice was issued on the Appellant on the 10th of March 2015 and not on the 8th of October 2015 as stated in Count 1 of the charge in abuse of the process".

4. At the hearing of the appeal, the appellant submitted that the respondent was obliged to file action within 12 months of sending letter dated 10 March 2015 in terms of section 262 of the Employment Relations Act. The appellant says that the respondent failed to file charges within the given period or to seek leave to extend time to institute proceedings.
5. The appellant submitted that the alleged offence was committed on 10 March 2015 and though the necessary information was available, the labour officer did not file charges until 3 August 2016, which was about seventeen months late.
6. The respondent submitted that letter dated 10 March 2015 was a request by the labour office and that the demand for payment of wages was by letter dated 8 October 2015. The respondent submitted that charges were filed on 3 August 2016, within 12 months of sending the demand.
7. Section 247 of the Act provides that an employer commits an offence when, upon written demand by the permanent secretary, a labour officer or a labour inspector, it fails within 7 days of the demand to pay any wages due to a worker.
8. Section 262 of the Employment Relations Act 2007 states:

“Notwithstanding anything in any other written law, proceedings for an offence against this Act may be instituted within the period of 12 months after the act or omission alleged to constitute the offence except that the court may grant leave to extend such period for a further 6 months.”
9. An offence is committed when an employer fails to make payment within 7 days of the demand for wages. Letter dated 10 March 2015 is titled, “Re: Request For Payment Of Dues To Worker(s)”. The employer was called upon to pay the annual leave dues of \$6,106.40. The letter does not contain details of the workers. The appellant was given 14 days to settle the dues.
10. The language used in letter dated 8 October 2015 leaves no doubt that it is a demand that must be met. It is titled, “Re: Demand For Payment Of Wages”. The employer was given 7 days within which to pay the outstanding dues. The letter

contained details of the workers and the periods related to their entitlements. It set out the consequences of failing to settle the demanded sum. The letter states the applicable sentences when found guilty of an offence.

11. The tribunal's finding is that the earlier letter was not a demand. On the basis that the demand was sent on 8 October 2015, the tribunal held that the charges were filed within time. The court finds no reason to interfere with the findings made by the tribunal on this issue.
12. The appellant submitted that the tribunal erred in saying that the employer's alleged failure to maintain proper leave records was the key issue to be determined, when the charges did not relate to the maintaining of records.
13. The tribunal may have made this observation on the basis of the evidence given by the respondent. The labour officer who gave evidence said that the employer did not maintain proper records. This aspect of the matter need not be determined in view of the decision reached by court.

ORDER

- A. The appeal is dismissed.
- B. The appellant is to pay costs summarily assessed in a sum of \$1,500.00 to the workers represented by the labour officer.

Delivered at Suva this 28th day of **November, 2023.**




M. Javed Mansoor
Judge