

IN THE EMPLOYMENT RELATIONS COURT AT SUVA

APPELLATE JURISDICTION

CASE NUMBER: ERCA 30 of 2018

BETWEEN: **SHORE BUSES LIMITED**

APPELLANT

AND: **TRANSPORT WORKERS UNION**

RESPONDENT

Appearances: Mr. N. Tofinga and Ms. Whippy for the Appellant.

Mr. S. Naidu for the Respondent.

Date/Place of Judgment: Thursday 25 April 2024 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

JUDGMENT

A. *Catchwords:*

Employment Law – Appeal – compliance orders issued by the Tribunal – the effect of the order of the Tribunal was that the employer was to comply with the Union’s request to initiate collective bargaining for 21 workers employed as drivers- employer appeals the decision as of right when the ERA mandates that compliance orders cannot be appealed unless leave of the Tribunal or the Court is sought- appeal is premature..

B. *Legislation:*

1. *Employment Relations Act 2007 (“ERA”): ss. 242 (5) (e) (iii).*
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Cause

1. This is an appeal filed by the employer against the compliance order of the Tribunal. The Tribunal had ordered the employer to comply with sections 148, 149, 153, 154 and 157 of the ERA. The effect of the order was that the employer had to comply with the Union’s request to start collective bargaining

for 21 workers employed by the appellant as drivers. The Tribunal had further ordered the employer to refrain from any act of discrimination or victimization in any manner or form against the members of the Union.

2. The employer has raised several grounds of appeal. I will not identify the grounds of appeal. When I commenced dealing with the appeal, the question that confronted me was whether the appeal is properly before the Court. Although none of the parties have raised this issue, I cannot ignore the requirements of the law and deal with the appeal irrespective. I have to deal with that issue first.

Can the Compliance Orders be appealed as of right to the Court?

3. It was for the appellant to ensure that the appeal was properly before the court. There are some decisions of the Tribunal which can be appealed, some which cannot be and some which needs leave of the Tribunal or the Court before it is appealed.
4. The first question that any appellant must ask is whether the decision can be appealed as of right. The orders issued by the Tribunal are compliance orders. The Tribunal had ordered compliance of the ERA.
5. Section 242(5)(e)(iii) of the ERA states that:

“242 (5) No appeal shall lie except with the leave of the Tribunal or the Court from any compliance order of the Tribunal.”

6. I have perused the records of the Tribunal. There was no application made before the Tribunal for leave to appeal the decision. There was also no application made in this Court for leave to appeal.
7. It is the clear position of the law that when a Tribunal grants any compliance orders, no appeal can be brought unless leave of the Tribunal or the Court is sought. The employer could not have brought this appeal without first having obtained the leave.
8. The employer proceeded to argue the appeal as if it is properly before the Court. The respondent’s representative also assumed that this appeal was properly before the court otherwise he would have raised the objection. Be that as it may, the hearing of the substantive appeal does not make the appeal valid without leave having first being granted. The appeal is prematurely filed and ought to be struck out.

9. I am of the finding that the appellant ought to have ensured that leave is first granted before an appeal is filed in this case. It is because of the appellant's lack of vigilance that the respondent has been put to costs. Although costs could have been minimized by the respondent if it identified that the appeal cannot be sustained without leave, it is still entitled to some minimal costs for being brought to court on a premature appeal.

Final Orders

10. In the final analysis I find that this appeal is prematurely filed as no leave to appeal was obtained by the employer from either the Tribunal or the Court as mandated by s.242(5)(e)(iii) of the ERA.
11. The appeal is dismissed.
12. The appellant is to pay to the respondent costs of the proceedings in the sum of \$500 within 21 days.



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Hon. Madam Justice Anjala Wati

Judge

25.04.2024

To:

1. *Mr. Noel Tofinga for the Appellant.*
2. *Transport Workers Union for the Respondent.*
3. *File: Suva ERCA 30 of 2018.*

