

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

ORIGINAL JURISDICTION

CASE NUMBER: ERCC 18 of 2017

BETWEEN: **RANEEL CHAND**

PLAINTIFF

AND: **AUSTRALIA AND NEW ZEALAND BANKING GROUP**

DEFENDANT

Appearances:

Mr. N. Sharma for the Plaintiff.

Mr. J. Apted for the Defendant.

Date/Place of Judgment:

Thursday 30 May 2024 at Suva.

Coram:

Hon. Madam Justice Anjala Wati.

JUDGMENT

A. Catchwords:

Employment Law – defendant’s application to strike out and dismiss claim on the basis that the claim is against an essential service and industry and the Employment Court does not have jurisdiction to hear claims brought against an essential service and industry and that a claim for unlawful, unfair and harsh termination is a cause of action that is not recognized in Fiji – “the Employment Court has no jurisdiction to hear employment grievances but if a claim for unjustified or unfair dismissal is “founded on a contract of employment”, and properly pleaded as such, the Employment Relations Court has jurisdiction under s. 22(1) (h) to hear and determine such a claim”: per Madam Justice Clark in ANZ Banking Group Pte. Limited v. Ajendra Sharma Court of Appeal of Fiji - Civil Appeal No. ABU 030 of 2022 at para. 64.

B. Cases:

1. *ANZ Banking Group Pte. Limited v. Ajendra Sharama* Court of Appeal of Fiji - Civil Appeal No. ABU 030 of 2022.

Cause

1. The defendant brings this action to strike out the plaintiff's claim brought by a writ for unlawful and unfair termination.
2. The employer's position is that under ss. 187 and 188 of the Employment Relations Act, the Employment Court has no original jurisdiction over any claim brought by a worker against an essential service and industry. ANZ Bank is designated as an essential service and industry.
3. Alternatively the employer says that the claim pleads unlawful and unfair dismissal which is a statutory cause of action that is not recognized by the law in Fiji and ought to be struck out.

Law and Analysis

4. The defendant's concerns are addressed by the recent judgment of the Court of Appeal: *ANZ Banking Group Pte. Limited v Ajendra Sharma Civil Appeal No. ABU 030 of 2022.*
5. Her Ladyship Madam Justice Clark said at para. 34:

"[34] Section 220 confers no jurisdiction on the ERC to hear and determine employment grievances whether as defined in s4 or s185 (relating to workers in an essential service industry). There are, however, three routes by which an employment grievance might find its way to the ERC;

- (i) for the purpose of enforcing a settlement reached in mediation;*
- (ii) on appeal; a party who is aggrieved by a decision of the Tribunal may appeal as of right to the ERC. Provided an appeal is made in the prescribed manner, an appeal lies as of right from any first instance decision of the Tribunal.*
- (iii) by transfer; as previously mentioned, a proceeding may be transferred by order of the Tribunal or if a party seeks special leave from the ERC. In*

either circumstance the transfer can only be ordered if “an important question of law is likely to arise” or if the case “is of such a nature and of such urgency that it is in the public interest that it be transferred”.”

6. Her Ladyship further went onto say at paragraphs 44 and 45:

“[44] The question is whether an employment grievance may be brought under s220 (1) (h) which gives the ERC jurisdiction to “hear and determine an action founded on an employment contract.”

[45] The answer is “no”. The ERC has no jurisdiction to entertain an employment grievance claim as such (unless transferred from the Tribunal or on appeal). The ERC does have jurisdiction to hear claims founded on contract where, as a matter of pleading and evidence, the contract will necessarily be central. Crucially, Mr. Sharma’s statement of claim before the ERC made no mention of a contract”.

7. At paragraph 64 Justice Clark answers the question on the issue of jurisdiction. She says:

[64] The two questions of law are set out once more, and answered as follows:

- (i) *Under Part 19 and Parts 13 and 20 of the Employment Relations Act 2007, can a worker in an Essential Service and Industry bring an Action or employment grievance in the Employment Relations Court or is s/he restricted to reporting an employment grievance to Mediation Services which can only refer this to the Employment Relations Tribunal if the grievance is not settled in mediation?*

Answer: The Employment Relations Court has no jurisdiction to hear and determine an employment grievance brought by a worker in an essential service and industry. Such a worker is bound to pursue their employment grievance first, by lodging it in accordance with s 188(4) and secondly, in

accordance with Part 13 pursuant to which the employment grievance will “first be referred for mediation services ...”

- (ii) *Can any worker in Fiji (whether or not employed in an Essential Service and Industry) bring a claim of unjustified dismissal or unfair dismissal directly to the Employment Relations Court (which has unlimited jurisdiction) or must those claims only be made in an employment grievance that can only be reported to Mediation Services and the Employment Relations Tribunal (which has jurisdiction not exceeding \$40,000).*

Answer: The ERC has no jurisdiction to hear employment grievances but if a claim for unjustified or unfair dismissal is “founded on a contract of employment”, and properly pleaded as such, the ERC has jurisdiction under s220 ((1) (h) to hear and determine such a claim”.

8. The plaintiff has brought this claim for unlawful and unfair dismissal under his contract of employment. The statement of claim pleads the contract in paragraphs 2, 3, and 4. It reads:

[2]. On 8th December, 2014 the Plaintiff commenced work with the Defendant in the position of Manager Finance under a Contract of Employment dated 3rd November 2014.

[3]. The said contract was a contract of an indefinite duration and the fundamental terms of the contract are provided in Schedule 1 of the contract as follows:

Particulars of the Employment Contract

- a. Appointed as Manager Finance grade 4.3 commencing 8th December 2014;*
- b. Indefinite term of the contract;*

- c. *Agreed 40 hours of work per four weekly and any additional hours needed to effectively perform role;*
- d. *A basic salary of \$88,000.00 per annum paid fortnightly based on full time hours as per Schedule 2 of the contract;*
- e. *The Defendant is to contribute 9% of salary = FJD 7,040.00 paid directly to Fiji National Provident Fund;*
- f. *The total Salary Package is FJD 95, 040.00 per annum;*
- g. *The total salary package may be reviewed annually;*
- h. *Additional benefits of Term Life Insurance and Medical Benefit;*
- i. *Entitled to receive an incentive or other reward based on performance;*
- j. *The Plaintiff is entitled to 20 days per annum for annual leave for each completed year of service and is entitled to sick leave, bereavement leave as per Schedule 3 of the contract;*
- k. *6 months' probation period from the commencement date;*
- l. *Defendant may end employment by giving 5 weeks' notice or without notice in cases of gross misconduct, willful disobedience of Bank's lawful orders or a serious or habitual neglect of duty.*

[4]. *That clause 8 of the contract provided for disciplinary procedure under which the contract could be terminated”.*

9. The breach of the contract is pleaded in paragraphs 15 and 16 of the statement of claim. Paragraph 18 claims unfair dismissal. The paragraphs read as follow:

“[15]. *That the Defendant has unlawfully, unfairly and harshly terminated the employment of the plaintiff:*

Particulars of Unlawful, Unfair and Harsh Termination

- (a) *The Defendant failed to give any warning letters to the Plaintiff in regards to his performance rather his performance reviews for the year ending 2016 resulted in an increase in remuneration and incentives;*
- (b) *The Defendant irrelevantly considered the past discussions between the Plaintiff and Defendant in reaching the outcome for termination of employment when no warnings were provided to the Plaintiff stating that the Plaintiff may be terminated or disciplined for the same;*
- (c) *The Defendant failed to consider the oversight on part of the Plaintiff which did not constitute gross misconduct.*
- (d) *The Defendant breached the employment contract by only paying 4 weeks of wages in lieu of notice when such contract allowed for giving of a 5 week notice period.*
- (e) *The decision of the Defendant to terminate the employment was manifestly harsh considering that the most severe penalty was imposed compared to the gravity of the conduct being disproportionate in all circumstances.*
- (f) *The Defendant failed to give genuine consideration to the explanation given by the Plaintiff for the oversight gross misconduct;*
- (g) *The Defendant failed to afford natural justice to the Plaintiff by failing to inform the Plaintiff in writing of the dissatisfaction with his performance requiring him to achieve a higher standard: failed to provide information in a readily comprehensible form for revised SRD and other Returns: failed to allow a reasonable time frame for attainment of standards.*

[16]. *That the Plaintiff reserves the right to provide additional particulars of unlawful, unfair and harsh termination upon receipt of the ANZ Performance Improvement & Unacceptable Behaviour Policy, Internal Grievance Procedure and Disciplinary*

Procedures contained in the Continuation of Terms and Conditions (Post ENI Decree) Policy.


[18]. *By unlawfully, unfairly and harshly terminating the employment of the Plaintiff, thereby causing the Plaintiff:*

- (a) Depression;*
- (b) Mental Anguish;*
- (c) Trauma;*
- (d) A feeling of despair and lack of self-worth."*

10. The plaintiff's claim is clearly brought upon a contract. He has given particulars of the breach. A worker in an essential service and industry does not have to report an employment grievance only. He can bring a claim for breach of contract and claim unlawful and unfair dismissal in the Employment Relations Court.

Final Orders

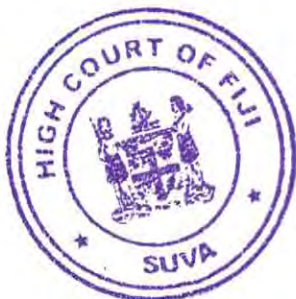
11. I dismiss the application for striking out. I order costs against the defendant in the sum of \$3,500 to be paid within 21 days. I will give directions for the progress of the matter after delivery of the judgment on appeal.



.....
Hon. Madam Justice Anjala Wati

Judge

30.05.2024



To:

1. *Nilesh Sharma Lawyers for the Plaintiff.*
2. *Munro Leys for the Respondent.*
3. *File: Suva ERCC 18 of 2017.*