

IN THE EMPLOYMENT RELATIONS COURT
AT SUVA

ERCC 05 of 2022

BETWEEN : **SHAILIN MALA**

PLAINTIFF

AND : **FIJI NATIONAL UNIVERSITY**

DEFENDANT

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

COUNSEL : **Mr. D. Nair for the Plaintiff**
Mr. R. Chand with Mr. R. Prasad for the Defendant

Date of Hearing : **1 August 2023**

Date of Judgment : **5 February 2024**

JUDGMENT

EMPLOYMENT

Originating summons – Redundancy – Sections

106 to 108 of the Employment Relations Act 2007

1. The plaintiff filed an originating summons on 13 April 2022 seeking declarations that the plaintiff's redundancy is unlawful, unfair, unjustified and unconstitutional, and that it was in breach of her employment contract. The plaintiff sought orders to withdraw the notice of redundancy and in the interim for the *status quo* to be maintained until the determination of the action, and for compensation in the event the redundancy is carried out.
2. The plaintiff stated in her affidavit that she was on a three year contract commencing 22 July 2019, and that she was sent a redundancy notice two months before the expiry of her contract. The plaintiff was employed as the manager of research grants within the research division. She says the defendant has not provided any justification to restructure three managerial positions within the research division, while four new positions are to be created under a new plan. The plaintiff says that the defendant advised the plaintiff on 2 March 2022, during a consultation meeting, to respond within a month to the proposed restructure. The plaintiff states that the defendant did not respond to her letter, but proceeded to advertise the new positions internally on 8 April 2022. Advertisements were also placed in newspapers on 9 April 2022 calling for applications to the research division in which the plaintiff is employed. The plaintiff also gave details of acts of discrimination and harassment by the defendant.
3. The defendant filed an affidavit through its manager, people performance & development, Pritika Aarishma Ram, and denied that the redundancy was not justified or that it did not comply with sections 106 to 108 of the Employment Relations Act 2007, which deal with redundancy. She states that the restructure of the research division is in line with a strategic plan for 2021 to 2026, with cost efficiency being an important objective. The defendant says that the restructured positions were advertised, but the plaintiff did not apply for those positions. The defendant says the plaintiff declined the redeployment offer as assistant lecturer

at the defendant's college of humanities and education. The plaintiff's request for the position of lecturer could not be acceded, as she did not have the required expertise and experience.

4. At the hearing, Mr. Nair submitted that the defendant's senior leadership team had decided upon redundancy without any prior planning to restructure the organisation. The plaintiff states that the manager research position is still intact, and there was no urgency to carry through the redundancy. The plaintiff says she was not considered for redeployment in other positions.
5. The defendant submitted that the plaintiff was employed on a contract from 22 July 2019 to 21 July 2022. She was served a redundancy notice on 1 March 2022, and there was compliance with the requirements of sections 107 and 108 of the Employment Relations Act. The defendant states that the redundancies were carried out after consultation, that the plaintiff was given extended time of a month for further consultation and that although the plaintiff's union was invited to a meeting, it did not turn up.
6. The defendant says that the restructure of the research unit was carried out on a recommendation by the pro vice chancellor, research and innovation, to the senior leadership team, consisting of the vice chancellor, pro vice chancellor, deans and directors, which approved the recommendation. According to the defendant the organisational chart produced by the plaintiff reflected the old structure, and that under the new structure, the three research managers have been removed. The defendant says that after the redundancy was carried out, it did not fill up the position of manager research and grants. The defendant says that the plaintiff was paid redundancy pay in excess of the amount specified by the statute. The plaintiff's salary slip confirms the payment.
7. This action was filed on the basis that there is a breach of the plaintiff's contract. There is no evidence – on the face of the affidavits – that the defendant did not comply with the requirements of sections 107 and 108 of the Employment Relations Act. The plaintiff's redundancy is said to have been carried out for financial reasons. The plaintiff was paid compensation in a sum exceeding that specified by the statute. The new organisational structure of the defendant shows

that the defendant did not retain the plaintiff's position. The plaintiff was consulted, and offered redeployment to a lesser salaried position, but this did not materialise. The plaintiff's affidavits, the contents of which are contested by the defendant, have not satisfied court that there is a cause of action against the defendant.


8. A further difficulty faced by the plaintiff concerns the jurisdiction of this court to adjudicate the matter. The plaintiff's complaint is about being made redundant when her position is intact. In other words she complains of having her employment terminated unjustly. She also complains of acts of discrimination and harassment. These fall within the definition of an employment grievance in section 4 of the Employment Relations Act 2007. The forum to adjudicate an employment grievance is specified as the Employment Relations Tribunal by section 211 (1) (a) of the Act.
9. The plaintiff also said she was not provided a certificate of service. However, Mr. Chand submitted that the certificate of service dated 26 May 2022 was issued to the plaintiff in 2022. He undertook to provide the plaintiff a copy, as Mr. Nair denied that his client received the certificate.
10. The action is dismissed for the foregoing reasons.

ORDER

- A. The plaintiff's originating summons is dismissed.
- B. The parties will bear their costs.

Delivered at **Suva** on this 5th day of **February, 2024**.




M. Javed Mansoor
Judge