

IN THE ARBITRATION COURT
AT SUVA

Action No. ARB 4 of 2025

BETWEEN: **Energy Fiji Limited** formerly known as Fiji Electricity Authority

Applicant/Employer

AND: **Construction Energy & Timbers Workers Union Fiji (CETWUF)**

Respondent

Date of Hearing: 3rd April and 11th April 2025.

Representation:

Applicant/Employer: Ms. M. Rakai (Sherani Solicitors)

Respondent/Union: Mr. S. Naidu (Representative of CETWUF)

Ruling

A. Introduction

[1] The Applicant (EFL) reported a trade dispute regarding the conduct of the Respondent (CETWUF) citing breach of the Mediated Agreement dated 21st September 2023. This ruling deals with the Respondent's (CETWUF) application to **strike out** the matter.

[2] The Union's (CETWUF) submission on the strike out application is as follows:

(a) **Improper notification contrary to Section 191AA** – the requirement is that a trade dispute be in writing to the Secretary of the Arbitration Court. The notification in this matter was to the Chair. This is procedurally invalid.

(b) **Absence of Statutory Basis under Section 191O** – the reporting of a trade dispute may only occur in these circumstances:

(i) **Submission of log of claims** – where a party has submitted a log of claims in form of proposals and has invited the other party to negotiate. The Applicant has not submitted any logs of claims to the Union.

(ii) **Non-Compliance with Arbitration Award** – Where either party reports non-compliance with an award of the Arbitration Court. In the present matter no such award has ever been issued by the Court.

[3] The response by EFL to the strike out application is:

(a). **Improper notification contrary to Section 191AA** – the objection is technical and not fatal.

(b) the dispute between the parties stems out of non-compliance of the Respondent to sign the Collective Agreement with terms of the Mediated Agreement that the Applicant has complied with. The Respondent (Union) has refused to honour the terms of the Mediated Agreement and has proceeded to try and include the 2024 log of claims before signing the new Collective Agreement and gone to include new 2025 log of claims.

(c) The Union has deliberately issued a secret ballot for strike notice on 7th May 2025.

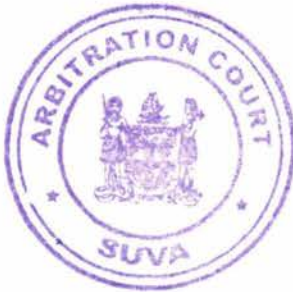
- [4] The first issue raised by the Union is that a trade dispute should be in writing to the Secretary of the Arbitration Court. The notification in this matter is to the Chair and that is procedurally invalid. On this issue, I note Section 191 AA that the request be in writing to the Secretary. The request by EFL was to the Secretary. It was however addressed to the Chair. I find there is nothing wrong with it being addressed to the Chair. The report was made to the Arbitration Court Registry and received by them on 28th February 2025. I find that it was submitted to the Secretary at the Registry. It was then forwarded to me for my directives. The report addressed to the Chair is not invalid.
- [5] EFL (Applicant) states that the Union following mediated agreement (for logs of claims pending for 2020, 2021, 2022 and 2023) dated 21st September 2023 failed to follow up on a Master Agreement. Then on 1st December 2023, the Union sent their 2024 log of claims for trades, staff and senior staff. EFL's issue is that instead of finalizing one set of issues and signing of the Master Agreement, the Union proceeded to add on new log of claim after the mediated agreement.
- [6] On 12th December 2024, EFL wrote to the Permanent Secretary for Employment reporting a trade dispute. The Permanent Secretary wrote on 14th February 2024 asking that procedures under Section 191R for conciliation be followed. I understand these relate to issues under the head of collective bargaining. Under that head the procedures are set out in Sections 191S, 191T and 191U.
- [7] Section 188 (1) provides that "*All trade disputes in essential services and industries shall be dealt with by the Arbitration Court in accordance with this Part.*" The Part it refers to is Part 19. A "*trade dispute*" in this Part means "*a dispute (including a threatened, impending or probable dispute) as to disputes of interest;*"
- [8] The Arbitration Court plays a significant role in dealing with or determining trade disputes. **Section 191AC** provides that "*[i]n determining a trade dispute, the Arbitration Court may have regard not only to the interests of the persons immediately concerned but to the interests of the community as a whole and in particular the condition of the economy of Fiji.*" The Arbitration Court shall **carefully and expeditiously hear, inquire into and investigate every trade dispute** of which **it has cognizance and all matters**

affecting the trade dispute and the just settlement of the trade dispute and shall determine the trade dispute by arbitration: Section 191 AB.

- [9] Section 191AA (b) of the Employment Relations Act 2007 allows either party, that is a trade union or an employer who is a party to a trade dispute to make a request in writing to the Secretary that a trade dispute be submitted to arbitration. I have already determined that the written request by EFL reporting the existence of a trade dispute between the parties is valid. The letter from the CEO of EFL (employer) is a request in writing to the Secretary that the trade dispute be submitted for arbitration. This satisfies Section 191AA (b) of the Employment Relations Act 2007.
- [10] The Arbitration Court will be convened to determine the matter. The parties are to notify this Court of their respective panel nominees at the next date.



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Hon. Justice Mr. Chaitanya S.C.A Lakshman
Chair – Arbitration Court



15th September 2025