

**IN THE STATUTORY TRIBUNAL, FIJI ISLANDS**  
**SITTING AS THE EMPLOYMENT RELATIONS TRIBUNAL**



## Decision

**Title of Matter:** Eitesh Sharma (Grievor)  
v  
Southern Cross Foods Limited (Employer)

**Section:** Section 236 Employment Relations Promulgation

**Subject:** Application for Costs Following the Event

**Matter Number(s):** ERT Grievance 132 of 2015

**Appearances:** Messrs S Ram and K Padarath, Samuel K Ram, Barristers and Solicitors, for the Grievor.  
Mr E Narayan, Patel Sharma Lawyers for the Employer.

**Dates of Hearing:** 23 October 2017

**Before:** Mr Andrew J See, Resident Magistrate

**Date of Decision:** 24 October 2017.

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### Background

1. This is an application for costs made by the Employer, as a result of the withdrawal of the employment grievance by the Applicant.
2. The facts that give rise to this case are somewhat novel, insofar as the Grievor initially was self-represented and had commenced a grievance complaint with the Mediation Service, with a view of seeking a compensatory amount for his unfair dismissal, in excess of the jurisdictional monetary limit of the Tribunal. That limitation is \$40,000.00, as provided for within Section 211(2)(a) of the *Employment Relations Act 2007*.
3. Prior to the commencement of the proceedings in the matter proper and alive to the fact that the Grievor was seeking damages in excess of the monetary limit, through his Counsel, he made an application to transfer proceedings to the Employment Court, in accordance with Section 218 of the Act.
4. For the sake of convenience that provision is set out as follows:-

*218.—(1) A party to the proceedings may apply to the Tribunal to have the proceedings transferred to the Court for the hearing and determination of the matter.*

*(2) The Tribunal may order the transfer of the proceedings to the Court if the Tribunal is of the opinion that—*

*(a) an important question of law is likely to arise; or*

*(b) the case is of such a nature and of such urgency that it is in the public interest that it be transferred to the Court.*

*(3) If the Tribunal declines to transfer proceedings to the Court, the party concerned may seek special leave of the Court for an order that the proceedings be transferred to the Court and the Court must apply the criteria that govern the Tribunal's decision under subsection (2).*

*(4) An order for transfer of proceedings to the Court under this section may be made subject to any conditions as the Tribunal or Court may impose.*

*(5) If an order for transfer is made under subsection (2), the Court may, if it considers that the proceedings were not properly transferred, order that the Tribunal adjudicate on the proceedings at the first instance.*

5. For the reasons set out within the decision of *Carpenters Fiji Limited trading as Carpenters Motors v Ajay Lal*<sup>1</sup>, this Tribunal refused the application to transfer the grievance and instead asked that the Grievor to withdraw the application and consider the next step to agitate the matter in the Employment Court.
6. The question now turns to the application made by Counsel for the Employer, as to what, if any costs should be awarded to the Employer, for responding to the prosecution of the matter, up and until the date in which it was withdrawn.

#### Section 236 of the Act

7. Section 236 of the Act provides as follows:-

*The Tribunal or the Court in proceedings may order a party to pay to any other party costs and expenses (including expenses of witnesses) as it thinks reasonable, and may apportion the costs between the parties or any of them as it thinks fit, and may at any time vary or alter the order in the manner as it thinks reasonable.*

8. Counsel for the Employer, Mr Narayan has sought an amount of \$2,000.00, that he says in part will do not that much more in meeting the costs of the town agents, that had appeared at various stages in this matter.
9. Mr Narayan was of the belief that had the matter been withdrawn earlier, that the costs incurred by the Employer would have been substantially less. Mr Ram on the other hand, asks that the Tribunal take a practical approach to the matter and not penalise the Grievor unnecessarily, where he had genuinely sought to prosecute his matter within jurisdiction

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<sup>1</sup> ERCA 2 of 2013 (2 November 2016).

and where he was of the belief that the matter could be transferred without penalty, by virtue of Section 218(1) of the Act.

10. The Tribunal is mindful of the observations made by her Honour Wati J in *Carpenters v Lal* and on that basis, believes that a case in which the Grievor sought relief in excess of the statutory ceiling, should have been withdrawn at a far earlier stage, in order to avoid some of the unnecessary costs incurred.
11. The fact that on 4 September this year, additional Directions had been issued to the parties, is a key illustration of where costs of the Employer have been wasted.
12. Based on the above, the Tribunal is of the belief that a sum of \$1500.00 is reasonable in the circumstances.

#### Decision

The Tribunal Orders that the Grievor pay to the Employer, costs in the sum of \$1500.00, within 21 days hereof.



Mr Andrew J See  
Resident Magistrate

