

IN THE EMPLOYMENT RELATION TRIBUNAL

AT LAUTOKA

Case No. ERT Grievance 132 of 2016

BETWEEN: RESINA KOROI

GRIEVOR

AND: TOKATOKA RESORT HOTEL

EMPLOYER

APPEARANCES:

Mr Kevueli Tunidau for the Grievor

Mr Ronald Singh for the Employer

Date of Hearing: 20 April, 2017

Date of Ruling: 20 February, 2018

JUDGMENT

The Application

1. Tokatoka Resort Hotel (hereinafter referred as the "**Employer**") filed a Summon to Strikeout on 14 September, 2016. The Employer sought the following Orders:
 - a. That the Grievor's application be wholly struck out for want of prosecution;
 - b. Alternatively that the ERT has no jurisdiction to adjudicate the matter; and
 - c. That the Grievor pay the Employer the costs of this application and all incidentals costs on an indemnity basis.
2. The Summon to Strikeout is supported by the **Affidavit of Tammie Tam** of Naviti Resort, Korolevu, Coral Coast, Sigatoka.

3. It is prudent to note that the Respondent in this application had elected not to file any Answering Affidavit and will rely on her legal submission. Consequently, all the facts deposed in the Affidavit of Tammie Tam remained unchallenged for the purpose of this application.

Summation of the Facts

4. The facts of this matter may be summarized as follows: Ms Koroi was employed by the Employer as an Executive Assistant. She commenced her employment on 23 April, 2012 and was terminated on 16 August, 2013. It is an undisputed fact that during her employment, the Resort investigated two incidents of breach of trust and confidence.
5. Ms Koroi set out her Grievance in an **ER 1 Form of 27 May, 2016**. Ms Koroi alleges that her termination was unjust and unfair. She sought the following reliefs:
 - a. Reinstatement under section 230(1)(a) of the ERA;
 - b. Reimbursement under section 230 (1) (b) of the ERA of my wages from the date of termination to date; and
 - c. Compensation under section 230(1) (c) for humiliation, loss of dignity and injury to feelings and loss of benefits.

Want of Jurisdiction

6. I shall now address the issue relating to want of jurisdiction. Section 211(2) (a) of the ERA states that:

Subject to subsection (3), the Tribunal has power-

 - (a) To adjudicate on matters within its jurisdiction relating to claims up to \$40 000.00; and...

7. The above section had been a subject of numerous judicial pronouncement including but not limited to the following case authorities: *Carpenters Fiji Ltd -v- Lal* (2016) FJHC 998, *FMF Foods Ltd -v- National Union of Factory and Commercial Workers* (2013) FJET 19 and *Tabua -v- Fiji Rugby Union* (2012) FJHC 1441. All these authorities agree that the ERT must adhere to limitation in the ERA.

8. On the above issue, it is important to echo the sentiments expressed by Justice Wati in *Tabua -v- Fiji Rugby Union* (*supra*):

I find this provision to strictly mean that the range of matters over which ERT has jurisdiction is confined to a monetary ceiling of \$ 40 000.00. I find that this ceiling applies to employment grievance and employment disputes as well.

9. Ms Koroi in her Form ER 1 states that she "was paid an annual salary of \$ 20 000.00". Her claim was lodged on 27 May, 2016. She was terminated on 16 August, 2013. She is seeking monetary compensation for a period of 2 years and 9 months. This amounts to \$ 55 000.00. This sum is well above the jurisdiction of this Tribunal. This excludes her claim for compensation for alleged humiliation, loss of dignity and injury to feelings and loss of benefits. If these are taken into account the claim would far exceed the jurisdiction of this Tribunal. The Tribunal therefore finds that Ms Koroi's claim exceeds the jurisdiction limit of the Tribunal.

Can the Tribunal alter or amend the claim so to bring the claim within the jurisdiction of the Tribunal?

10. The Tribunal finds that it is devoid of powers to amend the claim. As a creature of the ERA, the Tribunal can only adjudicate matters within its jurisdiction which relates to claims up to \$ 40 000.00. I agree with Counsel for the Employer, **that once a Claimant exercised his right to file a claim but choses the forum, the Tribunal cannot alter the claim to bring the same within its jurisdiction.**

Final Orders

11. This matter is struck out for want of jurisdiction. Parties are further ordered to bear their own costs.



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Ropate Green

Resident Magistrate