

**IN THE EMPLOYMENT RELATIONS COURT**

**AT SUVA**

**ORIGINAL JURISDICTION**

**CASE NUMBER:** ERCC 13 of 2018

**BETWEEN:** **OPETAIA RAVAI**  
**PLAINTIFF**

**AND:** **WATER AUTHORITY OF FIJI**  
**DEFENDANT**

*Appearances:* Mr. S. Valenitabua for Plaintiff.

Ms N. Choo for the Defendants.

*Date/Place of Judgment:* Friday 07 February 2020 at Suva.

*Coram:* Hon. Madam Justice Anjala Wati.

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**RULING**

*(Striking Out By Defendant)*

**A. Catchwords:**

*Employment Law – striking out on grounds of claim being barred under s. 188(4) of the ERA for not being filed within 21 days from the day it first arose – claim filed in Mediation Unit first as required by s. 188(4) of the ERA before it was withdrawn and filed in Employment Relations Court as the claim was beyond the jurisdiction of the Employment Relations Tribunal – since the 21 day rule was adhered to, the claim is within the prescription period and allowed to proceed.*

**B. Legislation:**

*1. The Employment Relations Act 2007 (“ERA”): ss. 110(3); 211(2) (a); 188(4) and 194(5).*

1. The plaintiff has filed a claim for unlawful and unfair dismissal against the employer. The defendant has applied for the claim to be struck out on the grounds that it is barred under s. 188 (4) of the ERA.
2. S. 188(4) of the ERA requires that an employment grievance between a worker and an employer in essential services and industries must be lodged or filed within 21 days from the date when the employment grievance first arose. It is not disputed that the defendant is categorized as an essential service and industry.
3. The employer's position is that the plaintiff was dismissed on 12 December 2017 and so the grievance first arose on that date. It is argued that the claim for unlawful and unfair dismissal ought to have been filed within 21 days from 12 December 2017. Ms. Choo argued that the claim was filed on 12 June 2018 which falls outside the 21 day period making the claim statute barred under s. 188(4) of the ERA.
4. Mr. Valenitabua has provided to us uncontroverted evidence that upon his dismissal, the plaintiff lodged his grievance with the Mediation Unit on 22 December 2017 by filing a Form ER1 as prescribed by the ERA.
5. When the matter could not be successfully mediated, the plaintiff withdrew his matter from the Mediation Unit on 19 February 2018 to avoid it being referred to the Employment Relations Tribunal ("**ERT**") as per the procedural requirements of the ERA: *s. 194(5)*.
6. S. 194(5) states that *"if a Mediator fails to resolve an employment grievance or an employment dispute, the Mediator shall refer the grievance or dispute to the Employment Relations Tribunal"*.
7. The basis on which the matter was withdrawn from the Mediation Unit was that the plaintiff's claim was beyond the jurisdiction of the ERT. If the matter was referred to the ERT, the plaintiff would be forced to confine his claim to \$40,000: *s. 211(2) (a)*.

8. I have perused the Form ER1 filed by the plaintiff at the Mediation Unit and also his withdrawal statement from the Mediation Unit. I find that the plaintiff was well within the 21 day rule to lodge his claim from the day it first arose.
9. S. 188(4) of the ERA not only requires the grievance to be filed within 21 days but it also mandates that the grievance shall be dealt with in accordance with Parts 13 and 20 of the ERA.
10. Part 13 of the ERA requires that all employment grievances must be first referred for mediation services as set out in Division 1 Part 20: s. 110(3). The plaintiff did what the law required of him to do.
11. There could be procedural complexities of first filing the case in the Mediation Unit knowing that the claim is one that would be beyond the jurisdiction of the ERT. However, this is not a matter that I should address in this case. I have dealt with this issue before and will deliberate on it if the facts of the case so require.
12. Since Mr. Valenitabua had provided us the information, I had informed the parties that the claim was not statute barred under the ERA. I had therefore ordered that it shall proceed to hearing. The parties however required a ruling in writing and thus the need for the same.
13. Before I leave the subject I must briefly touch on Ms. Choo's concerns that the claim is inclusive of a defamation claim which is not a matter for the ERC. I do not agree with this concern.
14. The plaintiff claims that the employer had made improper statements about him at the time of the dismissal. Whether this is conduct that amounts to unfair dismissal is very much an issue that the ERC can look into. I need not say more.
15. In the final analysis:

***(a) I find that the claim is not barred under s. 188(4) of the ERA and that it shall proceed to hearing.***

(b) The plaintiff is entitled to costs of the application which I summarily assess at \$750 to be paid within 7 days.



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*Hon. Madam Justice Anjala Wati*

Judge

07. 02.2020



To:

1. *Toganivalu & Valenitabua for the Plaintiff.*
2. *R Patel Lawyers for the Defendant.*
3. *File: ERCC 13 of 2018.*