

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

APPELLATE JURISDICTION

CASE NUMBER: ERCA 32 of 2018

BETWEEN: **SHARON PRASHIKA WATI**
APPELLANT

AND: **FIJI ELECTIONS OFFICE**
RESPONDENT

Appearances: Mr. D. Nair for the Appellant.
Ms. O. Solimailagi for the Respondent.

Date/Place of Judgment: Tuesday 23 March 2021 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

JUDGMENT

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 – is Fijian Elections Office a statutory body within the meaning of s. 185 of the ERA – whether the time for filing can be extended against an employer in an essential service and industry – should the issue of time limitation be heard on evidence or on papers alone.

B. Legislation:

1. *The Electoral Act 2014: s. 9.*
2. *The Employment Relations Act 2007 (“ERA”): ss. 188(4) and 185.*

Cause

1. The appellant employee appeals against the decision of the Employment Relations Tribunal (“ERT”) of 23 November 2018 on its findings that the Fiji Elections Office (“FEC”) is a statutory body and therefore classed as an essential service and industry. Consequently the grievance filed against the employer ought to have been so done within 21 days from the day it first arose.
2. In working out whether the employee had filed her grievance within time, it observed that she was terminated on 26 March 2017. The ER Form 1 through which the grievance was lodged was dated 3 June 2017 and received by the Mediation Unit on 3 July 2017. It was found that 21 days from the date of the termination would have expired on 15 April 2017. Since the grievance was filed more than 2 months after the expiry of the 21 days, it was time barred and could not be heard by the ERT,
3. On the question of whether the time could be extended, the ERT found that there was no provision in the law to extend the time against an employer in an essential service and industry and as such the grievance remains out of time.

Appeal

4. The employee appeals against the decision on the grounds that the FEO was not established by the State Services Act as found by the ERT but by the Constitution and as such it is not a statutory body. The FEO is not an essential service and industry and that any finding to that effect is wrong in law. The appeal also raised the issue of extension of time which should have been granted if the action was time barred. It was also raised that the issue of time limitation ought not to be heard through written submissions but a proper trial was necessary in the circumstances.

Findings

5. 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. The essential parts state that “any

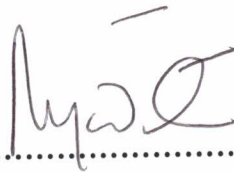
employment grievance between a worker and an employer in essential services and industries that is not a trade dispute shall be dealt with in accordance with Parts 13 and 20, provided such that any such grievance must be lodged or filed within 21 days when the employment grievance first arose,...”.

6. It needs to be first determined whether the FEO is an essential service and industry. S. 185 of the ERA states that a statutory body is included as an essential service and industry. The issue then is whether the FEO is a statutory body.
7. The FEO is an independent office established under s. 9 of the Electoral Act 2014. The respondent in this matter is the FEO and not any other person or body in the FEO. It is therefore plain and clear that the FEO is a statutory body and thus an essential service and industry.
8. There is no dispute that the aggrieved employee has not filed her grievance within 21 days from the day it first arose. All the employee now says is that she was entitled to extension of time if the grievance was not brought within 21 days. There is no provision in the law which allows for extension of time for filing of grievances out of time when it concerns an employer in an essential service and industry.
9. On the ground that this matter should not have been heard on submissions but a trial ought to have taken place is preposterous. The issue before the Court was whether the action was time barred. How can the matter be listed for trial without it being heard whether the action was time barred?
10. To hear whether the action was time barred, no evidence was necessary. All that the ERT needed to ascertain was the date of termination and the date of the filing of the grievance. These facts could be ascertained from the applicants Form 1 filed in the ERT as there was no dispute surrounding that.
11. What evidence was necessary for a preliminary issue to be tried was not stated by the appellant. The appellant also failed to state how she was prejudiced when the evidence was not heard on the issue of time limitation. I do not find that the ground was raised with any serious vigor.

12. Lastly, I should make my observations on the issue of costs. I find that the appeal was unnecessary in light of the clear findings of the ERT. However, the appellant had a right to have the matter brought to the Employment Relations Court. Since her grievance was not heard on the substantive issue as it was time barred, I do not think that it would be proper to make any order for costs against her. She was dismissed from her employment and due to her delay she could not vindicate her rights. Any orders for costs would be prejudicial to her.
13. On the other hand, the FEO was represented by the state where they do not have to pay costs for filing documents. I acknowledge that there would be costs for usage of the resources but when I cast my mind to the issue of prejudice, I find that it is fair to order each party to bear their own cost.

Final Orders

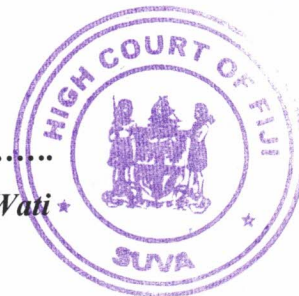
14. I find that the ERT was correct in finding that the FEO was an essential service and industry and as such any grievance filed against it ought to be so done within 21 days from the day the grievance first arose. I also find that there is no provision to extend time for filing of grievances out of time when the cause concerns an employer in an essential service and industry.
15. I therefore dismiss the appeal and order each party to bear their own costs of the appeal.



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Hon. Madam Justice Anjala Wati *

Judge

23. 03. 2021



To:

- 1. Mr. D. Nair for the Appellant.***
- 2. Attorney – General’s Chambers for the Respondent.***
- 3. File: ERCC 32 of 2018.***