

**IN THE EMPLOYMENT RELATIONS COURT**

**AT LAUTOKA**

**ORIGINAL JURISDICTION**

**CASE NUMBER:** ERCA 01 of 2016

**BETWEEN:** **AIR TERMINAL SERVICES LIMITED**  
**APPELLANT**

**AND:** **FEDERATED AIRLINE STAFF ASSOCIATION**  
**RESPONDENT**

*Appearances:* Ms. M. Rakai for the Appellant.

Ms. K. Tunidau for the Respondent.

*Date/Place of Judgment:* Monday 22 November 2021 at Suva.

*Coram:* Hon. Madam Justice Anjala Wati.

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**JUDGMENT**

**A. Catchwords:**

*Employment Law – whether the logs of claims filed in the Tribunal exceeded the jurisdiction of the Tribunal and the matter ought to have been struck out – whether the provision on jurisdiction applies to only individual claims and not log of claims.*

**B. Cases:**

*1. National Union of Factory and Commercial Workers v. FMF Foods Limited ERCA 13 of 2013*

**C. Legislation:**

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

*Cause*

1. The appeal is by the employer against the decision of the Employment Relations Tribunal of 2 June 2014 wherein it refused to strike out the Federated Airline Staff Associations ("*FASA*") log of claim on the grounds that it was in excess of the jurisdiction of the Tribunal.
2. In the Tribunal, FASA had filed a notice of secret ballot setting out its 16 log of claims. The log of claims included various matters for 400 workers. Very briefly, the log of claims included the following:
  - *Cost of living adjustment – 31 % increase for the period 1 January 2007 to 31 December 2013.*
  - *An increase of 50% in allowance.*
  - *Employer's contribution to FNPF: 10%: 8% gross earnings.*
  - *Increase in transport allowance from \$3.65 to \$11.97.*
  - *Increase on \$5 on existing miscellaneous allowance, disability payments and 100% or double when handling toilet services & sewerage clearance.*
  - *Increase from \$4.75 to \$10 meal allowance.*
  - *Increase from \$4.75 to \$10.00 meal allowance as per Article 9.*
  - *Increase from \$7.61 to \$15.00 on Article 6G meal allowance*
  - *Increase from computation taken over months/years worked for annual leave, redundancy; etc to being computed using average earnings using fortnightly pay over preceding 6 months for Articles 13G, 14I, 15D, 16A, 19E, and Article 21C.*
  - *Increase of maternity leave from 3 paid births to the 4<sup>th</sup> birth having received half pay in Article 16B.*
  - *Increase in paternity leave in Article 16D.*
  - *Increase in Article 21C to more than 100% of what is currently offered in the collective agreement of year = 2 weeks base pay.*
  - *Increase in sick leave from current not being payable upon termination to now being payable under Article 17D.*
  - *Increase in retirement gratuity from \$650 to \$1000 for retirement gratuity in Article 29 (F).*

- *New Article: Payment of \$2,000 upon death of employee to the next of kin.*
  - *New Article: Increase of death cover to \$100,000*
  - *Temporary suspended benefits under the MOA dated 19 February to be reversed immediately: public holidays, overtime pay and sick leave.*
3. The employer moved the Tribunal that the log of claims by FASA be struck out as it exceeded the jurisdiction of the Tribunal. The application was opposed by FASA. The position taken by FASA was that the log of claims could not be quantified.
  4. The employer responded and maintained its position on the basis that if the employer were to consider the 5% increase in salaries backdated to 1 January 2011 -2013 it would cost \$2.2 million Fijian dollars.

***ERT's Findings and Grounds of Appeal.***

5. The application for striking out was dismissed and an order for cost against the employer was made in the sum of \$200. The Tribunal's reasons for dismissing the application were that:
  1. *The legal provision which says that the Tribunal has jurisdiction to adjudicate matters within in jurisdiction relating to claims up to \$40,000 does not apply to log of claims but to individual claims.*
  2. *The parties to the dispute had voluntarily agreed to have the matter determined by the Tribunal when they signed an agreement at the mediation unit to refer the matter to the Tribunal for adjudication.*
6. Aggrieved with the decision, an application for leave to appeal the interlocutory decision was filed in Suva. Leave was granted and it was ordered that the appeal proper be filed in Lautoka Employment Court as the decision was delivered in Lautoka.

7. The crux of the appeal is to determine whether the legal provision which places the limitation on the Tribunal's jurisdiction applies to log of claims filed by FASA or that it only applies to individual claims.

*Analysis*

8. The first issue that I need to determine is whether 211 (2) (a) applies to all claims or just individual claims. The section states that the Tribunal has power to adjudicate matters within its jurisdiction relating to claims up to \$40,000.
9. The above provision includes all claims whether it is individual claims or collective claims by the employees. In my reading the above provision means that in any particular proceeding, if the claim exceeds the jurisdiction of the ERT than the Tribunal cannot hear the same for want of jurisdiction.
10. If logs of claims was an exception to the rule, that would have been clearly stated in the provision.
11. In my earlier judgment of *National Union of Factory and Commercial Workers v. FMF Foods Limited ERCA 13 of 2013* I had made a finding on a similar issue. I do not think that I now need to reinvent the wheel. My findings in that case is sufficient to answer the question in this appeal which is whether s. 211 (2) (a) will apply to the log of claims. I apply the following findings from that judgment but before I do that I must say that in this case although the claim was not quantified, it was for the Tribunal to find out whether the claims would exceed its jurisdiction. It was not refuted that the claim was going to go beyond the Tribunal's jurisdiction. In that case, the matter ought to have been struck out for want of jurisdiction.
12. Now to the applicable findings from *National Union of Factor and Commercial Workers (supra)*:  
  
"16. When a claim is made in the ERT and the question of jurisdiction under s. 211(2) (a) is raised, the duty of the ERT then becomes to peruse the claim and see if the claim is for an amount beyond \$40,000.

17. *In this case amongst other relief, the Union had asked for monetary payment in the form of increase in wages and the employer's submissions was that in each dispute the claim at the rate it is sought would amount to in excess of \$40,000. This was not disputed by the Union and therefore based on the claim; the question of jurisdiction was to be decided in favour of the employer.*
18. *Section 211(2) reads as follows:*
- "...the Tribunal has power to adjudicate matters within its jurisdiction relating to claims up to \$40,000,..."*
19. *The above section refers to the word "matters" which is analogous to the word "action". This means that in any one action, the claim must not exceed \$40,000. Whether it is individual claim or collective claim, no claim in any one action must exceed \$40,000.*
20. *The word "claim" indicates that it is not the award at the end of the day that determines the question of jurisdiction but the claim does.*
21. *If the ERT were to determine the quantum to decide the question of jurisdiction then by hearing the issue it would have already exercised jurisdiction. The parties by then would have been put to unnecessary expenses of going through the hearing only to be told at the end of the day that there is no jurisdiction to award the remedy because it offends s. 211(2) (a) of the ERP.*
22. *At the time of filing the case, it is the duty of the applicants to assess whether they are seeking relief for an amount in excess of \$40,000. If they are then they should look to the ERC rather than the ERT. ERC also has original jurisdiction to hear and determine claims founded on an employment contract.*
23. *The reference of the dispute by the Permanent Secretary and the Mediation Unit to the ERT does not abdicate the applicant from establishing the question of jurisdiction under s. 211(2) (a) when it is faced with it. This is a question of law that has to be determined by the ERT irrespective of the fact that it is being asked to hear the case. Indeed the ERT*

*heard the case but as obliged to by the provisions of the law, it heard the question of jurisdiction and when it found that it did not have any, properly struck out the claim.*

24. *It would not have been legally correct for the ERT to have transferred the disputes to the ERC when it found out that it did not have jurisdiction to hear the case. The act of transferring the case would amount to exercising the jurisdiction in the matter.*

25. *I find that the ERT was correct in striking out the matter when the appellant did not refute that the claims in the two disputes separately were in excess of \$40,000. In fact based on the employer's affidavit and the calculation as per the claim, the claim indeed exceeded the amount of \$40,000".*

13. I have not been convinced that my findings in the above matter were not correct. I must also say that when the matter was initially in the Mediation Unit, it was not settled and so the mediator referred it to the Tribunal. The Tribunal found that the parties had agreed to refer the matter to the Tribunal and so the employer had agreed that the Tribunal could exercise jurisdiction over the matter.

14. When a matter is not settled in the Mediation Unit, it has to be referred to the Tribunal by virtue of s. 194(5) of the ERA. If a matter is referred to the Tribunal under this provision it does not mean that the party against whom the claim is brought has submitted to the jurisdiction of the Tribunal and cannot raise the issue of jurisdiction. The employer ended up in the Tribunal by virtue of the provisions of s. 194(5) and not that it submitted to the jurisdiction. It had all the legal rights to raise the issue in the Tribunal.

15. The employer was not the applicant in the matter to decide what should be done with the case. It was for FASA to decide to either file an action in the Tribunal or to withdraw the matter and file the same in the Employment Court. The employer cannot vest on the Tribunal jurisdiction in a matter which is excluded by the law.

16. I find that the Tribunal erred in finding that s. 211(2) (a) applies only to individual claims and that the employer had agreed for the Tribunal to exercise jurisdiction in the matter. The claim, I find, exceeded the jurisdiction of the Tribunal as it was not opposed that the claim would be beyond \$40,000 as contended by the employer.

17. I therefore find that the action ought to have been struck out for want of jurisdiction.

*Orders*

18. I allow the appeal and strike out the claim in the Tribunal. I also set aside the order for costs against the employer awarded by the Tribunal. The affected party is at liberty to decide whether it wishes to file the claim in the Employment Court.

19. The respondent is to pay costs of the appeal proceedings in the sum of \$1,500 within 21 days.

*Anjala Wat*

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*Hon. Madam Justice Anjala Wat*

*Judge*

22. 11. 2021



To:

1. *Sherani & Company for the Appellant.*
2. *Kevueli Tunidau Lawyers for the Respondent.*
3. *File: Lautoka ERCA 1 of 2016.*