

SHAILESH PRASAD v AIR PACIFIC LTD (ET0001 of 2011L)

HIGH COURT — EMPLOYMENT RELATIONS JURISDICTION

5 TUILEVUKA M

23 February 2012

10 **Employment — termination of employment — issue of certificate of termination — whether plaintiff's claim caught under s 30(2) of the Essential National Industries (Employment) Decree (Decree No 35) of 2011 — designated corporation — alleged breach of employment contract — alleged wrongful dismissal — Employment Relations Promulgation — Essential National Industries (Employment) Decree ss 3, 30(2), 30(3) — Essential National Industries & Designated Corporations Regulations (Legal Notice No 81) Sch 1.**

15 The plaintiff was aggrieved by the termination of his employment, which he alleged was wrongful and in breach of his contract of employment. The plaintiff filed a claim before the High Court, which had to determine whether or not his claim was caught under s 30(2) of the Essential National Industries (Employment) Decree (Decree No 35) of 2011.

20 **Held –**

(1) The party being sued was listed as a designated corporation under Schedule 1 of the Essential National Industries & Designated Corporations Regulations 2011 Air Pacific Limited.

25 (2) The plaintiff's claim regarding the termination of his employment contract invoked the application of the provisions of the Employment Relations Promulgation 2007.

(3) The statement of claim was filed by the plaintiff prior to the commencement of the Essential National Industries (Employment) Decree.

Chief Registrar to issue Certificate of Termination.

30 *Lowing & Nandan* for the Plaintiff.

Siwatibau & Sloan for the Defendant.

Tuilevuka M.35 **INTRODUCTION**

[1] I am to determine whether or not the plaintiff's claim in this case is caught under s 30(2) of the Essential National Industries (Employment) Decree (Decree No 35) of 2011. My authority to deal with this matter derives from a directive dated 06 October 2010 by the Honorable Chief Justice to all Judicial Officers on Procedure for Referring Civil Matters to Chief Registrar¹

[2] The purpose of the Decree is set out in s 3 which I reproduce below.

45 1. The said directive states as follows:

When the question of whether a case falls within a category where the Chief Registrar may consider termination under one or other Decree, it may be wise to follow the following procedure:

1. If the parties to the litigation agree that the case does come within the relevant Decree, the judge can make the necessary order to refer it to the Chief Registrar for her consideration.

50 2. If the parties do not so agree, the judge should ask for submissions and have the issue argued, then rule. This way, the litigants have the opportunity of a hearing to argue that it does not come within the respective Decree.

purpose

3. The purpose of this Decree is to ensure the viability and sustainability of certain industries that are vital or essential to the economy and the gross domestic product of Fiji.

5 [3] Sections 30(2) and (3) of the said Decree state as follows:

10 30-(2) Any proceedings, claim, challenge or dispute of any nature whatsoever in any court, tribunal, commission or before any other person or body exercising a judicial function, against any designated corporation that had been instituted under or involved the Employment Relations Promulgation 2007 before the commencement date of this Decree but had not been determined at that date or is pending on appeal, shall wholly terminate immediately upon the commencement of this Decree, and all orders whether preliminary or substantive made therein shall be wholly vacated and a certificate to that effect shall be issued by the Chief Registrar or the Registrar of the Employment Relations Tribunal.

15 30-(3) where any proceeding, claim, challenge, application or dispute of any form whatsoever is brought before any court, tribunal, commission or any other adjudicating body, in respect of any of the subject matters in subsection (2), then the presiding judicial officer without hearing or in any way determining the proceeding or the application, shall immediately transfer the proceeding or the application to the Chief Registrar or the registrar of the Employment Relations Tribunal for termination of the proceeding or the application and the issuance of a Certificate under subsection (2).

20 [4] Clearly, from the above, a Certificate of Termination is only to be issued where:

- 25 (i) the party being sued is a designated corporation.
 (ii) the proceeding or claim has been instituted under or involves the Employment Relations Promulgation 2007.
 30 (iii) the proceedings or claim were instituted before the commencement of the Essential National Industries (Employment) Decree.

Is Air Pacific Limited a Designated Corporation?

35 [5] Under Schedule 1 of the Essential National Industries & Designated Corporations Regulations 2011 (Legal Notice No 81 – Thursday 08 September 2011), Air Pacific Limited is listed as a designated corporation.

Whether the proceedings or claim has been instituted under or involves the Employment Relations Promulgation 2007?

40 [6] The plaintiff is suing Air Pacific Limited for damages for an alleged breach of his employment contract and wrongful dismissal. He was an Accountant with Air Pacific Limited for some five years and 4 months. He was allegedly summarily dismissed on 10 September 2010.

45 [7] The events which triggered the purported summary dismissal happened on 21 August 2010 at the Nadi International Airport. As to be expected, the parties are at slight variance as to what exactly happened. There is no need for me to discuss this further in this ruling. Suffice it to say that the plaintiff is aggrieved by the termination of his employment contract which he alleges was wrongful and in breach of his contract of employment. His claim is filed before the Employment Relations Division of the High Court at Lautoka. Undoubtedly, the issues raised will invoke the application of the provisions of the Employment Relations Promulgation 2007.

Whether the proceedings or claim was instituted before the commencement of the ENI (E) Decree?

[8] The statement of claim in this case was filed on 08 February 2011. The Essential National Industries & Designated Corporations Regulations 2011 (Legal Notice No 81 – Thursday 08 September 2011) came into force on 09 September 2011 (see paragraph 5 above). And the commencement date of the ENI (E) Decree was also 09 September 2011 by virtue of Legal Notice No 82²

CONCLUSION

10 [9] The plaintiff's claim is caught under s 30 of the Essential National Industries (Employment) Decree (Decree No 35) of 2011. Accordingly, I will send this file along to the Chief Registrar for issuance of the Certificate of Termination under s 30(2).

15 *Chief Registrar to issue Certificate of Termination.*

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2. [LEGAL NOTICE NO 82], ESSENTIAL NATIONAL INDUSTRIES (EMPLOYMENT) DECREE 2011 (Decree No 35 of 2011), Commencement Notice states as follows: "IN exercise of the powers vested in me by s 1 of the Decree, I hereby appoint 9th September 2011 as the commencement date of the Essential National Industries (Employment) Decree 2011 (Decree No 35 of 2011). Dated this 8th day of September 2011. Sgd J V BAINIMARAMA, Prime Minister & Minister for Finance, National Planning, Public Service, People's Charter for Change and Progress, Information, Sugar Industry, Indigenous and Multi Ethnic Affairs and Provincial Development.

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