IN THE EMPLOYMENT RELATIONS TRIBUNAL

AT SUVA

Miscellaneous Action No. 34 of 2024

BETWEEN: **THE UNIVERSITY OF THE SOUTH PACIFIC**

APPELLANT

AND: **PERMANENT SECRETARY of the MINISTRY OF EMPLOYMENT, PRODUCTIVITY & WORKPLACE RELATIONS**

FIRST RESPONDENT

AND: **THE MINISTRY OF EMPLOYMENT, PRODUCTIVITY AND WORKPLACE RELATIONS**

SECOND RESPONDENT

AND: **ASSOCIATION OF THE UNIVERSITY OF THE SOUTH PACIFIC (AUSPS)**

THIRD RESPONDENT

AND: **UNIVERSITY OF THE SOUTH PACIFIC STAFF UNION (USPSU)**

FOURTH RESPONDENT

AND: **THE ATTORNEY-GENERAL OF FIJI**

FIFTH RESPONDENT

Appearances
Mr. Clarke W. for the Appellant
Mr. Mainavolau J. for the 1st, 2nd, 5th Respondent
Mr. Nandan S. for the 3rd and 4th Respondent

Date of Hearing: 7 March, 2025
Date of Decision: 27 June, 2025

DETERMINATION OF THE EMPLOYMENT RELATIONS TRIBUNAL

Cause / Background

1. The University of the South Pacific ("**USP**") appeals against the decision of the Permanent Secretary of the Ministry of Employment ("**PS**") dated 9 October 2024 when it rejected their Notice of Dispute dated 18 September 2024 ("**Notice of Dispute**").

2. The Notice of Dispute reads:

This is a dispute as defined in section 4 of the Employment Relations Act 2007, between USP and the Union in relation to the employment of the Vice Chancellor and President, Prof. Pal. Ahluwalia (VCP).

The dispute is that the Union seeks the removal of the VCP (i.e. the termination of his employment) whereas the employer, USP, does not agree to that demand. The dispute is confirmed and proven by the fact that the sole issue for voting in the Union strike ballot, held on 14 August 2024, was for "the removal of the Vice Chancellor and President.'"

3. The PS rejected the Notice of Dispute in a letter dated 9 October 2024, which reads:

"I refer to your report of a dispute dated 18 September 2024 which relates to the issue of the "removal of Vice Chancellor" against University of the South Pacific Union (USPSU) & Association of the University of the South Pacific Staff (AUSPS).

Upon completion of the analysis of the highlighted issue, the dispute is not accepted on the basis that it is vexatious and given that both the Unions have exhausted due process as stipulated under section 175(3) of the ERA.

Therefore under section 170(1) (a) and 170(2) (a) & (b) of the ERA, I reject the report of the dispute."

4. In response, USP filed this appeal with the Employment Relations Tribunal on 23 October 2024, pursuant to section 239 of the Act, under the following grounds:

The term "dispute" is (relevantly) defined in the Act as being a dispute or difference between an employer and a registered trade Union in connection with the employment or on-employment of a worker.

On 14 August 2024, the members of the Third Respondent and Fourth Respondent employed by the Appellant conducted a strike ballot and the sole issue to be decided upon was "the removal of the vice Chancellor and president" of the Appellant who is also an employee of the Appellant.

The result of the ballot was that the Third Respondent and Fourth Respondent members were given a mandate to strike seeking the removal of the Vice Chancellor and president of the Appellant.

The dispute between the Appellant and the Third Respondent and further respondent is clearly an employment dispute in relation to the (continued) employment of the Vice Chancellor and President of the Appellant.

The First Respondent was bound by law to accept the notices under section 170 of the Act because they clearly disclosed a 'dispute' as defined in the Act and erred in law in rejecting them.

That the First Respondent erred in law in refusing the notices without giving adequate or proper reasons for his decision.

To the extent that the First Respondent have any reasons, he erred in law in refusing the notices on the basis that both the Third Respondent and Fourth Respondent had exhausted due process as stipulated in section 175(3) of the ERA when that provision only dealt with the process of conducting a strike ballot.

The reason given by the First Respondent also erred in law in that section 175(3) of the Act is procedural and cannot operate or be applied in a manner that deprives sections 169(10 and 177(c) of the Act of their operation and purpose.

The ballot to strike solely concerned the issue of "removal of the Vice Chancellors & president", however, members of the Third Respondent and Fourth Respondent engaged in striking out on the issue of termination and reinstatement of Dr. Tamara Osborne – going beyond the mandate of the strike resulting in unlawful strike. (This ground was added on 11 November 2024).

5. Based on the Agreed Facts And Issues, the following legal issues are to be determined:

   (a) *Whether the Notice of Dispute falls within the definition of "dispute" under section 4 of the Act.*
   (b) *Whether the PS was bound to accept the Notice of Dispute under section 170 of the Act.*
   (c) *Whether the PS was wrong in law to reject the Notice of Dispute on grounds that it was vexatious and that the Unions had exhausted due process under section 175(3) of the Act.*

Law and Analysis

6. At the beginning of the hearing, Tribunal raised the question whether the appeal had become moot, given that the strike mandate expired on 14 February 2025. Counsel for the Unions submitted that the matter is essentially between USP and the Ministry on legal issue only, however, the removal of the VC is still an issue. Counsel for the PS submitted that

the issue had become moot. Counsel for USP however, insists that the underlying dispute - the interpretation of section 170 of the Act– remains a live issue warranting determination.

7. On 6 May 2025, Tribunal invited written submissions on whether the call for the VC's dismissal remained an active issue. Only the Appellants filed submissions. Without any indication from USPSU and AUSPS that they have withdrawn this demand, the only logical conclusion is that the matter is still very much alive.

8. With mootness out of the way, I will now consider whether the dispute, as framed - namely, the Union's demand for the removal of the VC, which the employer, USP, opposes - constitutes a "dispute" under the *Employment Relations Act 2007*.

9. Although the term "worker" is broadly defined in the Act, the Respondent's submission that it only includes Union members in the context of a "dispute" creates uncertainty. This uncertainty justifies using a plain meaning and purposive approach, which requires that the Act must be interpreted to support its overarching goals such as "*ensuring the effective prevention and efficient resolution of employment-related disputes.*" The Tribunal must therefore ask whether excluding non-union members fits with what Parliament intended in establishing a framework that promotes fair and inclusive employment relations.

10. These statutory definitions are relevant:

> *"**Worker**" means a person who is employed under a contract of service, and includes an apprentice, learner, domestic worker, part time worker or casual worker.*
>
> *"**Dispute**" means a dispute or difference between an employer and a registered trade Union connected with the employment or non-employment, the terms of employment, or the conditions of labour of a worker.*
>
> *"**Trade Union**" means the Union of a group of* not less than seven workers *the principal object of which is to regulate the relationship between –*
>
> *(a) Workers and employers for the conduct of collective bargaining on terms and conditions and related matters; or*
> *(b) Worker,*
> *Irrespective of whether such Union would, if this Act had not been enacted, have been deemed to have been an unlawful Union by reason of one or more of its objects being in restraint of trade.*

11. Notably, none of the above definitions explicitly requires that the worker be a union member. The definition of "worker" is deliberately broad. And the definition of "dispute" focuses not on the individual's affiliation, but on the subject matter - namely, employment-

related concerns arising between a union and an employer, such as employment status, terms, or conditions. Also, the use of the term "worker" in the context of a trade union is about *who can form a union and its purpose.* Importantly, the definition does not require that those workers already be members of a union. Rather, it presupposes that any group of eligible workers - regardless of prior union affiliation - may come together to form a Union. This reinforces the view that the term "worker" under the Act is not confined to Union members, but rather encompasses all individuals who fall within the broader employment relationship contemplated by the Act.

12. The definition of "dispute" requires, first, that the matter be between an employer and a registered trade Union. In the present case, the dispute is between the University of the South Pacific (the employer) and two registered trade unions - USPSU and AUSPS - satisfying this threshold requirement. Second, the dispute must concern the employment or non-employment, terms of employment, or conditions of labour of a worker. While the Unions' demand for the removal of the VC may appear to target the employment of a non-union member, the substance of the grievance centres on how his leadership directly affects the conditions under which union members work. This includes, for example, allegations of administrative mismanagement and the high-profile dismissal of AUSPS President Dr. Osborne-Naikatini, which union members contend have undermined trust, job security, and procedural fairness (see the 8th August 2024 open letter from the Union to the members of the USP Council, Annexure RF1 in *Affidavit in Opposition of the Third Respondent to the Affidavit of Agnes Kotoisuva* filed on 12 November 2024, and the USPSU letter dated 12 July 2024 addressed to the VC (Annexure B in the *Affidavit of Agnes Kotoisuva*)). This clearly connects the Union's concerns to the conditions of employment of its members.

13. The next issue is whether the PS was bound to accept the Notice of Dispute under section 170, or alternatively, whether the PS was wrong in law to reject the Notice of Dispute on grounds that it was vexatious and that the Third Respondent and Fourth Respondent had exhausted due process under section 175(3). The interpretation of section 170 has been addressed in the *Evergreen case*[1], which imposes a clear and binding obligation on the PS: every employment dispute reported must be accepted within 30 days unless it is (a) frivolous or vexatious, (b) unresolved internal procedures remain, or (c) it is filed more than three months late without good cause. The wording of the section is unambiguous: *acceptance is the default*, and rejection is only permitted under the narrowly defined exceptions.

[1] *Evergreen International Fiji v Permanent Secretary for Employment, Productivity and Industrial Relations* [2025] FJET 1; ERT Miscellaneous Appeal 08 of 2024 (24 January 2025)

14. In rejecting the Notice of Dispute, the PS cited two reasons: that it was "vexatious" and that "due process had already been exhausted" under section 175(3). While the Act does not expressly define "vexatious," it is well established that a claim may be deemed vexatious having little or no legal basis and causing disproportionate inconvenience, harassment and expense to the defendant or other party.[2] In this case, the Respondents submit that "*At this point in the time-line, the Unions had completed the pre-requisites to go on strike, having exhausted due process under section 175(3) of the Act. This meant that the dispute resolution stage under the Act had been nullified now that the matter had escalated into the strike phrase. On this premise, the second notice had become moot and therefore vexatious.*" (1st, 2nd and 5th Respondents Submissions, para. 16).

15. Tribunal notes that section 175(3), however, only outlines the process for conducting a secret ballot for a strike. It does not suggest that securing a strike mandate erases or invalidates ongoing or subsequent dispute resolution processes. No case authorities were submitted in support of this position.

16. Section 170 provides a mandatory legal pathway: if a dispute is reported and meets the criteria, it must be referred to Mediation Services or the ERT - *regardless of any industrial action underway*. Importantly, section 177(c) confirms this coexistence: a strike becomes unlawful if a dispute is still being processed. This presupposes that the strike and dispute processes can run in parallel. One does *not* cancel out the other. This interpretation aligns with the overarching purpose of the Act, which is to promote good faith in employment relationships, ensure the timely and effective resolution of disputes, and maintain industrial harmony through institutional mechanisms. Sections 170 and 177(c) function as complementary safeguards within this framework: the former mandates dispute resolution via mediation or the ERT, while the latter renders strikes unlawful when such processes are ongoing. Reading these provisions together reinforces the legislative commitment to resolving conflicts through dialogue first. To allow a strike to override or nullify the dispute process would undermine this core objective.

17. Consequently, the Permanent Secretary's decision dated 9 October 2024 in rejecting the Appellant's Notice of Dispute dated 8 September 2024 is inconsistent with the mandatory obligation imposed by section 170 of the Act.

Determination

18. In conclusion, the Permanent Secretary's refusal to accept the Appellant's Notice of Dispute dated 18 September 2024 was legally unfounded. Section 170 of the Act establishes a mandatory framework for handling valid employment disputes. The strike phase does not override or invalidate the dispute resolution process under the Act. Unless

[2] Attorney-General v Baker [2000] 1 FLR 759

a dispute clearly meets the narrow exceptions provided by law, the Permanent Secretary is obligated to act, not dismiss. The rejection on grounds of mootness and vexatiousness, therefore, constituted a misapplication of the law.

Orders

19. A Declaration that the Permanent Secretary's decision of 9 October 2024 erred in law by rejecting the Notice of Dispute filed by the Appellant on 18 September 2024 in relation to a dispute between the Appellant and Third Respondent and Fourth Respondent.

20. The Permanent Secretary to accept the Notice of Dispute under section 170 of the Act.

21. Costs summarily assessed at $1,000, to be paid within 28 days.

22. 28 days to appeal.

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Ms. Mary Motofaga
Resident Magistrate

27 June 2025