

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

APPELLATE JURISDICTION

CASE NUMBER: ERCA 13 of 2013

BETWEEN: **NATIONAL UNION OF FACTORY AND COMMERCIAL WORKERS**

APPELLANT

AND: **FMF FOODS LIMITED**

RESPONDENT

Appearances: Mr. D. Nair for the Appellant.

Mr. N. Tofinga for the Respondent.

Date/Place of Judgment: Thursday 16 July 2015 at Suva.

Coram: Hon. Madam Justice A. Wati.

JUDGMENT

Catchwords:

Employment Law – Jurisdiction of ERT limited to claims up to \$40,000 – no jurisdiction to transfer cases to ERC where claim exceeds \$40,000.

Legislation:

1. **The Employment Relations Promulgation 2007 (“ERP”): s211 (2) (a).**

The Cause and Background

1. On 19 August 2013, the Employment Relations Tribunal (“ERT”) struck out two disputes being Employment Dispute No 2 and 3 of 2012 on the grounds that the claims in each dispute exceeded \$40,000 and as such was beyond its jurisdiction.

2. The orders for striking out were made pursuant to the applications by the employer filed separately in each case.
3. The appellant, aggrieved at the order for striking out, filed an appeal on the following grounds:
 - (i). *That the ERT erred in law and in fact by failing to consider that the disputes were referred to it by the Permanent Secretary and/or the Mediation Unit pursuant to s. 211(1) of the ERP.*
 - (ii). *The ERT acted unreasonably and unfairly when she allowed the interlocutory application on grounds of want of jurisdiction without first determining the actual quantum of the claim.*
 - (iii). *The ERT erred in law and in fact when she failed to refer the disputes to an appropriate forum for recourse despite general powers bestowed on it by s. 210(1) of the ERP.*

Appellant's Submissions

4. Mr. Nair argued that when a dispute is referred by the Permanent Secretary for Labour or the Mediation Unit the Tribunal is required under section 211(1) (j) and (k) of the ERP to adjudicate the matter. The ERT then is not left with any option to strike out the dispute on the grounds that it is in excess of its jurisdiction.
5. The failure by the ERT to adjudicate the disputes has denied the appellant the due process of hearing.
6. The ERT should have first determined the claim and the actual quantum that it would award the appellant because it was not necessary that the entire claim of the Union was going to be granted. Further, amongst the log of claims, there were other claims made by the Union and that concerned the review of the Collective Agreement. By striking out the Dispute, the appellant was denied even the right to be heard on the aspect of review.

7. If the ERT was of the opinion that it could not hear the claims because it was in excess of its jurisdiction then it could have transferred the claims to the Employment Relations Court.
8. The nature of the dispute involved the collective bargaining in respect of the members of the Union. The Union has the right to negotiate for its members collectively. It therefore sued the employer on behalf of the affected members. It is not possible to present individual claims for different members.
9. Each members claim did not exceed \$40,000 but the collective claim was made in each dispute. The jurisdiction provision is limited to each members claim and as such the ERT failed to determine that each members claim did not offend the jurisdictional provision.
10. If the jurisdictional provision was to apply to collective claims made by the Union, then the Union will not be able to utilize the dispute mechanism available to it by the ERP. It will have to go to the ERC which is not the spirit of the ERP.

Respondent's Submissions

11. Mr. Tofinga argued that the employer had at the Tribunal made a formal application for striking out of the dispute and in support of that application an affidavit was filed which deposed that the Union's log of claim demanding an increase to all its members' waged hourly rate by 20 cents across the board would amount to more than \$40,000.
12. A computer generated print out of what the proposed wage increase would collectively amount to if implemented was attached to the affidavit. The 2011 Log of Claims forming the basis of the claim in Employment Dispute Number 2 of 2012 sought a further 10% increase on top of the 20 cents sought in the 2010 claim which formed the basis of the Employment Dispute Number 3 of 2012.
13. This assertion of the employer was not refuted in the affidavit by the Union. This meant that the Union accepted that the claim was in excess of \$40,000 which was beyond the jurisdiction of the ERT.

14. S. 211(2) of the ERP states that the Tribunal has power to adjudicate on matters within its jurisdiction relating to claims up to \$40,000. If the claim is within the jurisdiction of the ERT then it can hear the case but in this case clearly the claim was in excess of \$40,000 and so the ERT had no option but to strike it out.
15. When the matter was struck out the prudent thing for the Union was to have filed an action in the Employment Relations Court and move the matter forward instead of filing an appeal and wasting time.

Analysis

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:

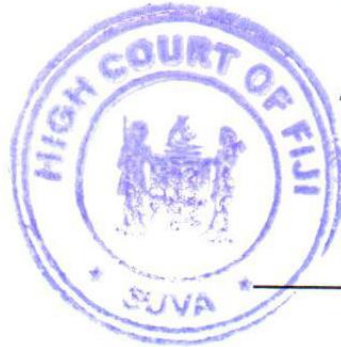
“ ... the Tribunal has power to adjudicate matters within its jurisdiction relating to claims up to \$40,000,...”
19. The above section refers to the word “*matters*” which is analogous to the word “*action*”. This means that in any one action, the claim must not exceed \$40,000. Whether it is individual 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.

Final Orders

26. For the reasons I have enunciated, I find that the appeal does not have any merits and I dismiss the same.

27. Each party shall bear its own costs of the appeal proceedings.



Anjala Wati

Anjala Wati

Judge

16.07.2015

To:

1. *Mr. Damodar Nair for the Appellant.*
2. *Mr. Noel Tofinga for the Respondent.*
3. *File: Suva ERCA 13 of 2013.*