

**IN THE EMPLOYMENT RELATIONS COURT**

**AT SUVA**

**ORIGINAL JURISDICTION**

**CASE NUMBER:** ERCC 16 of 2016

**BETWEEN:** **ASERI TUKUCA REWA and SUNIA BOLAVATU**  
**APPLICANT**

**AND:** **THE CHIEF MEDIATOR**  
**1<sup>st</sup> RESPONDENT**

**AND:** **THE PERMANENT SECRETARY FOR THE PUBLIC**  
**SERVICE COMMISSION**  
**2<sup>nd</sup> RESPONDENT**

*Appearances:* Mr. Maisamoa for the Applicant.

Ms O. Solimailagi and Ms. L. Raikatalau for the Respondents.

*Date/Place of Judgment:* Wednesday 17 February 2021 at Suva.

*Coram:* Hon. Madam Justice Anjala Wati.

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**JUDGMENT**

**A. Catchwords:**

*Employment Law – whether the Public Service Commission can be classed as an essential service and industry – whether the grievance between the parties ought to have been lodged within 21 days from the day it first arose – claim filed in Mediation Unit after 21 days and the Mediation Unit refused to accept it on the grounds that it is time barred – PSC is deemed to fall under the term “government” and as such the time limitation in s. 188(4) of the ERA applies..*

**B. Legislation:**

- 1. The Employment Relations Act 2007 (“ERA”): ss. 188(4) and 185.*

*Cause/Background*

1. The applicants have filed an application through a motion seeking an order that the employment grievance lodged with the Chief Mediator on 25 May 2016 relating to the termination of the applicants, employed by the Public Service Commission, be listed before the Employment Relations Tribunal for adjudication.
2. The application is filed against the Chief Mediator because when the applicants had lodged their grievance with the Mediation Unit ("*MU*") on 25 May 2016, the MU wrote and advised the applicants that their grievance cannot be accepted as it was not filed within 21 days from the date the grievance first arose.
3. The provision of the law relied on by the MU was s. 188(4) of the ERA which states 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,...*"
4. The background facts leading to the employment grievance as contended by the applicants is that both the applicants were advised by the PSC on 30 October 2015, in writing, that due to the Civil Service Reform Program, their services were no longer required and that the PSC intended to cancel their contract with effect from 29 February 2016.
5. The applicants say that through the same letter they were advised that they would be transferred in the new Ministry of Civil Service in the Transition Unit until they secure a position in any other Ministry, however, on 29 February 2016 they were dismissed and not transferred.
6. Due to the actions of the PSC, the applicants feel that they have been unlawfully and unfairly dismissed. Following that they lodged a grievance in the MU on 25 May 2016 which was refused by the MU on the basis I have earlier identified.

### ***Submissions***

7. The principal contention raised by the applicants is that the PSC is not identified as an essential service and industry in Schedule 7 of ERA and as such s. 188(4) does not apply to the matter at hand. It was also argued that although the definition of an essential service and industry includes the government, it does not include the government agencies. Mr. Maisamoa also referred to the Interpretation Act 1967 which defines the term "government" as the "government of the state". If that is the definition, Mr. Maisamoa argues, that government entities are not included.
8. The respondents' position is that s. 185 of the ERA defines what an essential service and industry is which includes the government. The applicants were employed by the PSC which is part of the government.
9. The respondents' further argued that pursuant to Legal Notice Number 45 of 2015, PSC, was considered government business and by ministerial assignment within the purview of the Attorney-General and Minister for Finance, Public Enterprises, Public Service and Communications. Today, although the PSC has been restructured, it is still considered as government business under the ministerial oversight of the Attorney-General. Since PSC is part of the government, the grievance should have been filed within the time limit provided in s. 188(4) of the ERA.

### ***Issue and Determination***

10. The issue before me is very narrow. It requires me to determine whether the 2<sup>nd</sup> respondent, the PSC falls under the definition of an essential service and industry under s. 185 of the ERA. If it does then the applicants ought to have filed their grievances within 21 days from the day it first arose. If it does not then the time frame of 21 days does not apply to the applicants and the PSC.
11. I must first of all go to the definition of the term essential service and industry or essential services and industries. It means as s. 185 states "*a service listed in Schedule 7 and includes those national industries declared and designated corporations or designated companies*

*designated under the Decree, and for the avoidance of doubt, shall also include the government;...”*

12. Before I expand on the definition and give it an interpretation, I think I must cast my mind back to s. 188(4) which states that an employment grievance between a **worker** and an **employer in an essential service and industry** must be lodged or filed within 21 days from the date when the employment grievance first arose.
13. The term “*worker*” under s. 185 means a person who has entered into or works under a contract of service with an employer in an essential service and industry, and **includes an officer or servant of the government**. This definition of the worker is contained in s. 185 which falls under part 19 of the ERA. This part is specifically designated for Essential Services and Industries.
14. My finding is that if a worker includes the officer or servant of the government then the term government cannot be restricted to government of the day. It should, to give it proper meaning and effect, include the government as an employer.
15. The term government is in the context of being an employer. It is not doubted that the public servants are employed by the government and paid by the government. An institution is nominated to look after the affairs of the public servants and that is the PSC. The PSC is part of the government as an employer and thus falls under the definition of an essential service and industry.
16. I therefore find that since the PSC is an essential service and industry, the grievance ought to have been filed within 21 days from the day it first arose and when it was not, the MU was correct in not accepting the same on the grounds that it was time barred.

#### ***Final Orders***

17. In the final analysis, I find that the 2<sup>nd</sup> respondent, the PSC, is an essential service and industry and is covered by s. 188(4) of the ERA.

18. I further find that the application before me suffers the question of time limitation in that the grievance was not filed within 21 days from the day it first arose. I therefore cannot allow the same to be now adjudicated by the ERT.

19. I therefore dismiss the application and order that each party bears their own costs of the proceedings.



*Anjala Wati*

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*Hon. Madam Justice Anjala Wati*

*Judge*

*17. 02.2021*

To:

1. *Mr. Maisamoa for the Applicants.*
2. *Attorney-General's Chambers for the Respondents.*
3. *File: ERCC 16 of 2016.*