

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

ORIGINAL JURISDICTION

CASE NUMBER: ERCC 15 OF 2016

BETWEEN: **HARBANS NARAYAN**
APPLICANT

AND: **MINISTER FOR EMPLOYMENT, PRODUCTIVITY &
INDUSTRIAL RELATIONS**
RESPONDENT

Appearances: Mr. Rajeshwar Singh for the Applicant.

Mr. A. Prakash for the Respondent.

Date/Place of Judgment: Friday 28 July 2023 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

A. Catchwords:

Employment Law – Whether the claim against the respondent being an essential service and industry brought within the time limit prescribed by the legislation – claim time barred – there being no provision for any extension of time, the claim cannot continue – claim struck out.

B. Legislation:

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

Cause/Background

1. On 30 November 2016, the Applicant filed a claim against its former employer, the Respondent, claiming damages for unlawful and unfair termination of his employment.

2. Mr. Harbans Narayan was employed as a Mediator by the Ministry of Employment, Productivity & Industrial Relations (*“Ministry”*).
3. On 22 September 2016, the Ministry issued a Notice to the employee informing him that his contract would come to end on 22 November 2016. The reason for the termination was outlined in the notice.
4. The notice reads:

“Subject – Notice – Termination of Contract

1. *As you are aware, the Mediator post is now a line position as per the 2016/2017 budgetary approval and as such this position was advertised on Saturday 3 September 2016 in the newspaper as per the requirements of the Open Merit Recruitment and Selection Criteria.*
 2. *This correspondence serves as an official formal notification of termination of your contract in accordance with clause 9 (a) of your employment contract.*
 3. *You are hereby given 2 months' notice effective from today of the termination of your contract. Therefore, your last day of employment will be Tuesday 22 November 2016 where you will be required to handover all official assets belonging to the Ministry unless you are successful in your application to the abovementioned post.*
 4. *I appreciate the commitment and loyalty you have rendered to the Ministry and Government as a whole. We wish you all the best in your future endeavours.*
 5. *The Acting Manager Corporate Service will liaise with you regarding your unutilized leave and all other human resources matters”.*
5. On the day the matter was set for hearing, Mr. Prakash raised that the action is time barred under s. 188(4) of the ERA and that it ought to be struck out. In my ex-tempore ruling, I allowed

the preliminary issue to be addressed first as it had the potential to negate the substantive claim filed by the applicant.

Issues/ Law and Determination

6. The issue before the court is whether the claim by the plaintiff is filed out of time and as such cannot proceed.
7. Part 19 Division 2 is a provision that covers employment grievances against essential services and industries. The defendant undoubtedly is an essential service and industry as s. 185 of the ERA includes the government as an essential service and industry. The applicant was employed and paid for by the Government of Fiji.
8. To decide whether the claim has been brought within the time limit prescribed by the law, I have to cast my mind to s. 188(4) of the ERA which reads:

“Any employment grievance between a worker and an employee in essential services and industries ... shall be dealt with in accordance with Parts 13 and 20, provided however that any such employment grievance must be lodged or filed within 21 days from the date when the employment grievance first arose, and-...”

Underlining is Mine

9. The applicant employee is challenging the decision of the employer of 22 September 2016. This is very clear from his originating summons. This is the day on which the notice for termination of the employment was issued. It is therefore clear that the grievance first arose on 22 September 2016. The time period of 21 days runs from this day. It is therefore plain and clear that the applicant did not file his claim within the requisite 21 days and as such his claim is time barred.
10. Mr. Singh argued in court that the employee cannot bring a claim in court before he is terminated. Since his termination took effect on 22 November 2016, the time runs from that date. I do not agree with Mr. Singh. The applicant knew on 22 September 2016 that his contract

would end on 22 November 2016. The grievance therefore arose on the day the decision was made to terminate his contract and not on the day the contract actually came to an end.

11. Under the specific provision covering employment grievances against essential services and industries, there is no provision for extension of time to bring a claim and as such I find that the general provisions for extension of time under any other provisions of the law in the ERA or any other written law does not assist the applicant.
12. On the question of costs, I find that it will be unjust and inequitable to order costs against the applicant as he is unemployed and his cause could not be determined by late filing of the matter. He has not been able to vindicate his rights due to the delay in filing of the claim. That does not equate to exonerating the employer from the claim. In the circumstances, an order for each party to bear their own costs is just and fair.

Final Orders

13. I find that the claim is not filed within the time limitation prescribed by s. 188(4) of the ERA and as such it cannot proceed to continuation. The claim shall, and I so order it to be struck out.
14. I order each party to bear their own costs of the proceeding.



A handwritten signature in blue ink, appearing to read "Anjala Wati", is written over a horizontal dotted line.

Hon. Madam Justice Anjala Wati

Judge

28. 07.2023

To:

1. *Fiji Public Service Association for the Applicant.*
2. *Attorney – General’s Chambers for the Respondent.*
3. *File: ERCC 15 of 2016.*