

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

ORIGINAL JURISDICTION

CASE NUMBER: ERCC 13 of 2018

BETWEEN: **OPETAIA RAVAI**

PLAINTIFF

AND: **▲ WATER AUTHORITY OF FIJI**

DEFENDANT

Appearances: Mr. Sevuloni Valenitabua for the Plaintiff.

Ms. N. Choo for the Defendant.

Date/Place of Judgment: Friday 19 January 2024 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

RULING

A. Catchwords:

Employment Law – request by the defendant for further and better particulars – is the defendant prejudiced in any way in filing its defence – application refused since the particulars requested for are either in the statement of claim, irrelevant or evidence that should not form part of the pleadings.

B. Cases:

1. *Ritesh Singh v Fiji Revenue & Customs Authority- ERCC 7 of 2016.*

C. Legislation:

1. *Employment Relations Act 2007 (“ERA”): ss. 188 (4).*
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Cause

1. The defendant has filed an application for further and better particulars. The plaintiff's claim surrounds his dismissal as the Chief Executive Officer of the Water Authority of Fiji.
2. This ruling will also cover a previous application for leave to appeal my decision of 7 February 2020 where I had dismissed the defendant's application to strike out the plaintiff's claim on the grounds that it was not filed within 21 days as required by the law.
3. I had refused leave to appeal the decision largely on the grounds that the proposed application for leave was based on a misconceived comparison with a judgment that I had given in another case. The defendant's counsel indicated that the defendant wanted a written ruling in respect of the refusal to grant leave to appeal the decision.

Parties Position and Analysis

4. I will first of all deal with the application for further and better particular followed by the reasons why I had refused the leave to appeal the decision to strike out the plaintiff's claim.
5. There are several paragraphs of the pleading in respect of which further and better particulars are sought.
6. Paragraph 8 of the statement of claim reads:

“Since 2012 and again from 2016 the Plaintiff was required to work under stressful and challenging conditions. As CEO of WAF the Plaintiff steered the Authority from being an organization in complete disarray with little direction, few systems and procedures to one that attracted funding of FJ\$800 million.”

7. In respect of paragraph 8, the defendant wants the full particulars of how the Authority was left in a disarray between the periods 2012 to 2016. The defendant also seeks particulars of lack of system and procedures that the plaintiff is relying on and how the \$800m funding was applied to upgrade the system and procedures.
8. I do not find that there is any need for particulars to be provided in respect of how the Authority was in disarray. The claim is self-explanatory that the Authority was disorganized with few systems and procedures in place. The shortfalls in procedures and systems are identified in paragraph 9 of the claim. The defendant should read the claim holistically and not raise alarm after reading each paragraph in isolation.
9. On how the \$800m dollars was applied to upgrade the system and procedures, the defendant should have that information. If it does not have that information and is denying that money was spent in upgrading the system at the Water Authority of Fiji then the same would be a matter for evidence at the trial. Particulars in that regard is not necessary for the defence as the nature of the claim surrounds the plaintiff's dismissal and it is for the defendant to establish that the termination was lawful and fair.
10. Paragraph 9 of the statement of claim reads:

"The plaintiff as CEO inherited WAF from the previous Department of Water Supply with poorly trained staff, an antiquated reticulation network, no maintenance records, minimal information and data collection, and an almost non-existent training programme. And as an added challenge, there was no accurate mapping of the network. There were few rural water development projects and a larger percentage of WAF's customers were experiencing intermittent water supply"

11. The defendant seeks in respect of paragraph 9 the following:

[i] particulars of poorly trained staff and training program;

[ii] particulars of rural areas with few water development projects; and

[iii] specifics of the percentage of customers who experienced intermittent water supply.

12. Whether there were poorly trained staff or not is a matter of perspective. If this is what the Plaintiff noticed when he was appointed, then it is sufficient for him to make that statement and elaborate on it during the hearing of the matter. It is for him to tender evidence of that during the trial. If the defendant is of the view that the statement cannot be established with evidence, it can deny the same in its defence. It is not precluded from raising a full defence with the pleading as it stands.

13. As for the training programs introduced, the statement of claim, as it goes further indicates the type and nature of training provided to the staff of the Department. The defendant should care to read the statement of claim in full rather than raising concerns on each paragraph without comprehending and appreciating the claim in full. I can identify for the defendant that the relevant paragraphs are 15 to 24.

14. In respect of the rural areas with few water development projects and the customers affected by intermittent water supply, paragraph 13 [last bullet point] explains the position. There is no need for any more particulars for a proper defence to be raised.

15. Paragraph 10 of the statement of claim reads:-

“Since 2012, WAF through the Plaintiff’s leadership addressed the shortcomings of the previous Department of Water Supply and at the same time substantially strengthened WAF in the midst of challenges listed above at paragraph 7. This was achieved with a limited budget and the support of a truly outstanding and motivated staff that have benefited from extensive ongoing training programmes”.

16. The defendant seeks as follows:

[i] the shortcomings that the plaintiff addressed;

[ii] specifics of what the plaintiff addressed at the Authority and what were the challenges he faced;

[iii] specifics of what was achieved with limited budget and how much was the alleged budget; and

[iv] the training program and the information of staff that benefitted from the same.

17. The particulars sought are all addressed in paragraphs 11 to 27. There is no need to state the amount of budget that was in existence to achieve the plans the WAF did under the leadership of the plaintiff. That is immaterial to the issue of the plaintiff's performance as a CEO.

18. Paragraph 15 of the statement of claim reads:-

"The Plaintiff introduced a comprehensive training programme to address staffing needs in this highly technical business, with an allocated 5 days a year per employee towards training, a major set up from the 0.9 day per year provided by the Water Department."

19. The defendant seeks specifics of the alleged comprehensive training program and specific dates and year these were introduced. I find the request frivolous and meant to delay the claim. The particulars sought is not something extraneous from the records and information of the defendant. The defendant would have knowledge of the type of training received by staff and the specific dates of such training if there were any. If there was no training, the defendant can refute the claim. The purpose of particulars is not to test the knowledge of a party in respect of dates and times.

20. Paragraph 16 of the statement of claims reads:-

"The plaintiff was instrumental in the introduction of a graduate civil engineering programme that pays WAF employees' full salaries while they pursue their studies. This alleviated a serious shortage of engineers specializing in strong engineering and technical background in water and wastewater management."

21. The defendant seeks from the plaintiff the specific date and year the alleged graduate civil engineering program was introduced. The defendant should have that information to be able to file the defence. If it refutes that there was any program as such, it can deny the claim. The request is irrelevant for a complete defence to be raised.

22. Paragraph 18 reads:-

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“The Plaintiff was instrumental, on behalf of WAF, in twinning with Sydney Water; Australia which saw the development of the implementation of the Liquid Trade Waste Policy in Fiji, which was approved by the Republic of Fiji Cabinet on 15th February 2017.”

23. The defendant seeks the specifics of how the plaintiff was instrumental with the Sydney Water Australia project and how his contribution implemented the Liquid Trade Water Policy.

24. The defendant’s request is seeking for evidence on the issue which is a matter for trial.

25. Paragraph 31 reads:-

“Further in the alternative, the Plaintiff states that engineers employed by WAF would assist the Plaintiff whenever the need arises. They possess extensive water and wastewater engineering knowledge or know-how to assist the Plaintiff.”

26. The defendant wants the particulars of the engineers and how they assisted the plaintiff. The defendant ought to know who its engineers are. It is absurd to ask for the nature of the assistance they provided to the plaintiff as the Chief Executive Officer. It is axiomatic that they would be providing assistance in the field of their expertise. Further, considering the nature of the claim, it is irrelevant to ask for such particulars for a complete defence.

27. Paragraph 42 of the statement of claim reads:

“The said statement by WAF through Mr. PL Munasinghe was defamatory of the Plaintiff in that objectively, it tended to lower the Plaintiff in the estimation of right-thinking members of the Fijian society especially the staff and stakeholders of WAF.”

28. The defendant seeks particulars of who are the right thinking members of the Fijian society and the staff and stakeholders of the Water Authority of Fiji.

29. The defendant’s request is nothing short of absurd. Is it so difficult for the defendant to understand the phrase *“the right thinking members of the society”*? It is a term used to indicate good and proper citizens of a country. The plaintiff includes the defendant’s staff as right thinking members of the Authority. Now the defendant wants particulars of the staff who are right thinking members of the Authority. Is it suggesting that there are staff who are not right thinking members of the Authority? Perhaps it can name them rather than seeking particulars on such an aspect. I find the request preposterous.

30. Paragraph 43 of the statement of claim reads:-

“As a result of the defamatory words published and made known to some person other than the Plaintiff by the Defendant concerning the Plaintiff, caused the right-thinking fellow workers of the Plaintiff, friends, clients and stakeholders to shun or avoid the Plaintiff.”

31. The defendant seeks:-

[i] *particulars of persons to whom the alleged defamatory words were made known; and*

[ii] *particulars of who are the right thinking fellow workers of the plaintiff, friends, clients and stakeholders being pleaded by the plaintiff.*

32. The plaintiff has clearly pleaded that the articles were published in the 2 newspapers in Fiji. These newspapers are for the public. It is therefore not relevant to plead whom the defamatory words were published to. It is axiomatic that the public was made aware of the news.

33. I do not find it proper for the defendant to ask for particulars of people in the Authority, and amongst the plaintiff's friends and family who are right thinking members. I find the request absurd.

34. Paragraph 45 of the statement of claim reads as follows:-

"In their natural and ordinary meaning the said words meant and were understood to mean that the Plaintiff was:-

- (i) Incompetent*
- (ii) Unqualified*
- (iii) Unskilled*
- (iv) Incapable*
- (v) Inept*
- (vi) Inexpert*
- (vii) Untrained*
- (viii) Inexperienced"*

35. The defendant seeks specifics of which part of the publication translated to the list of vocabulary provided in the said paragraph.

36. The articles in the two newspapers are short and can be read and interpreted by the parties to see if it meets the claim.

37. Paragraph 46 of the statement of claim reads as follows:-

"Further or alternatively the said words bore and were understood to bear the meanings pleaded in paragraph 44 above by way of innuendo."

38. The defendant seeks specifics of what part of the article translated to bear "innuendo" as pleaded.

39. I repeat my earlier observation that the articles are short and simple and gives a clear reflection of what concerns the plaintiff.

40. Paragraph 47 of the statement of claim states as follows:-

“In consequence the Plaintiff’s reputation has been seriously tarnished, and he has suffered damages, distress and embarrassment for defamation of character.”

41. The defendant seeks particulars of how his reputation was tarnished, who found the publication as tarnishing and specifics of damages suffered by the plaintiff.

42. The request borders on asking for evidence and is not permissible at this stage of the pleadings. It is sufficient for the plaintiff to plead it in the form he did and provide evidence during the trial.

43. I now turn to my reasons for refusing leave to appeal my judgment of 7 February 2020. Succinctly, the defendant had applied for the claim to be struck out on the grounds that the same is barred under s.188(4) of the ERA.

44. I had made my finding in paragraphs 2 to 14 of my judgment. They reads as follows:-

“[2] S.188(4) of the ERA requires that an employment grievance between a worker and an employer in essential services and industries must be lodged or filed within 21 days from the date when the employment grievance first arose. It is not disputed that the defendant is categorized as an essential service and industry.

[3] The employer’s position is that the Plaintiff was dismissed on 12 December 2017 and so the grievance first arose on that date. It is argued that the claim for unlawful and unfair dismissal ought to have been filed within 21 days from

12 December 2017. Ms. Choo argued that the claim was filed on 12 June 2018 which falls outside the 21 day period making the claim statute barred under s.188(4) of the ERA.

[4] Mr. Valenitabua has provided to us uncontroverted evidence that upon his dismissal, the plaintiff lodged his grievance with the Mediation Unit on 22 December 2017 by filing Form ER1 as prescribed by the ERA.

[5] When the matter could not be successfully mediated, the plaintiff withdrew his matter from the Mediation Unit on 19 February 2018 to avoid it being referred to the Employment Relations Tribunal ["ERT"] as per the procedural requirements of the ERA: s.194(5).

[6] S.194(5) states that **"if a Mediator fails to resolve an employment grievance or an employment dispute, the Mediator shall refer the grievance or dispute to the Employment relations Tribunal."**

[7] The basis on which that matter was withdrawn from the Mediation Unit was that the plaintiff's claim was beyond the jurisdiction of the ERT. If the matter was referred to the ERT, the plaintiff would be forced to confine his claim to \$40,000:s. 211(2)(a).

[8] I have perused the Form ER1 filed by the plaintiff at the Mediation Unit and also his withdrawal statement from the Mediation Unit. I find that the plaintiff was well within the 21 day rule to lodge his claim from the day it first arose.

[9] S. 188(4) of the ERA not only requires the grievance to be filed within 21 days but it also mandates that the grievance shall be dealt with in accordance with Parts 13 and 20 of the ERA.

[10] Part 13 of the ERA requires that all employment grievances must be first referred for mediation services as set out in Division 1 Part 20: s.110(3). The plaintiff did what the law required of him to do.

[11] There could be procedural complexities of first filing the case in the Mediation Unit knowing that the claim is one that would be beyond the jurisdiction of the ERT. However, this is not a matter that I should address in this case. I have dealt with this issue before and will deliberate on it if the facts of the case is required.

[12] Since Mr. Valenitabua had provided us the information, I had informed the parties that the claim was not statue barred under the ERA. I had therefore ordered that it shall proceed to hearing. The parties however required a ruling in writing and thus the need for the same.

[13] Before I leave the subject I must briefly touch on Ms. Choo's concerns that the claim is inclusive of a defamation claim which is not a matter for the ERC. I do not agree with this concern.

[14] The plaintiff claims that the employer had made improper statements about him at the time of the dismissal. Whether this is conduct that amounts to unfair dismissal is very much an issue that the ERC can look into. I need not say more..."

45. The defendant's main concern on leave to appeal was that I had earlier struck out a case filed by an employee Ritesh Singh. The case reference is **Ritesh Singh v Fiji Revenue & Customs Authority - ERCC 7 of 2016**.

46. Ms. Choo argued that in that case I had specifically held at paragraph 10 that "the plaintiff's argument that it raised the grievance with the employer within 2 days does not

assist his case as the term lodging and filing is in reference to lodging and filing the case in Court”.

47. Ms. Choo said that if I had earlier held that filing and lodging meant filing in Court then the plaintiff Mr. Ravai did not file his case in Court within 21 days. She therefore insisted that I should apply the same findings in this case and strike out the matter.

48. Ms. Choo has erroneously applied the findings of my earlier case to this one. In that case the issue was whether the term lodging and filing within 21 days should mean to include lodging a grievance with the employer. My answer was no. No such issue arose in this case. The issue in this case was whether the filing and lodging in the Mediation Unit was sufficient compliance of the requirement for filing and lodging a claim within 21 days. My answer was and still is yes. I find no other convincing argument on leave to appeal to hold otherwise.

49. It would be unfair to drag this claim any further and any leave to appeal will only be prejudicial to both the parties as there is no chance of a successful appeal from my decision. The employment matter will not proceed if leave to appeal is erroneously granted. I find it improper for the plaintiff to wait this long for his case to be determined.

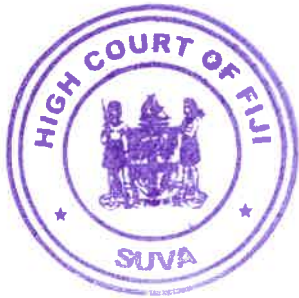
Final Orders

50. The application for further and better particulars is dismissed.

51. The application for leave to appeal my decision of 7 February 2020 is refused.

52. The parties must now file the PTC minutes by 15.02.2024. The matter is now listed in Court on 16 February 2024 at 9.30am to check on compliance.

53. I award costs against the defendant in the sum of \$3,000.00 to be paid within 21 days on its unsuccessful application for further and better particulars.



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Hon. Madam Justice Anjala Wati

Judge

19.01.2024

To:

1. **Valenitabua & Associates for the Plaintiff.**
2. **R. Patel Lawyers for the Defendant.**
3. **File: Suva ERCC 13 of 2018.**

