



## Decision

### *Section 8 Workmen's Compensation Act*

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Title of Matter:	LABOUR OFFICER v HANGTON PACIFIC	(Applicant)  (Respondent)
Section:	Section 8 Workmen's Compensation Act	
Subject:	Compensation for permanent partial impairment.	
Matter Number(s):	ERT WC 72 of 2012	
Appearances:	Ms S Taukei for the Applicant Ms N Kumar for the Respondent	
Dates of Hearing:	26 August 2016	
Before:	Mr Andrew J See, Resident Magistrate	
Date of Decision:	26 August 2016	

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### EX TEMPORE JUDGMENT

#### Background

1. This is an application made by the Labour Officer for and on behalf of Mr. Kemueli Tausia, a worker formerly employed by Hangton Pacific Co. Ltd of Walu Bay, Suva. A formal Application alleged that on 25th of April 2010 an injury arose in the course of employment,

when the worker Mr. Tausia was involved in a workplace accident<sup>1</sup> while engaged as a person working on a fishing vessel for and on behalf of his former employer.

2. The Applicant Labour Office during these proceedings had been represented by the Attorney General's Chambers, seeking compensation in the amount of \$12, 044.60;<sup>2</sup> in respect of there being 33 % permanent partial incapacity to the Worker, in accordance with Section 8 of Workmen's Compensation Act Cap 94.
3. It is probably worthwhile at the outset recalling the position of the Tribunal in relation to the impressions received from both the Applicant and the Respondent in relation to the conduct of this proceeding.<sup>3</sup> Given that this is a matter that commenced in 2012, that relates to an injury that was suffered on or around April 2010, it is of extreme concern to the Tribunal that the parties have taken so long to prepare themselves in the prosecution of the matter. Specifically, on the last occasion that the parties were issued Directions by the Tribunal in relation to this matter, there was a question raised for the need to advance this matter with some urgency and to attend to the tasks at hand. While admittedly that point was reinforced to both lawyers, in particular it was directed to the Respondent's lawyers having regard to a series of events that had transpired prior to the Directions hearing where a series of lawyers without any apparent coordination, appeared before the Tribunal.

#### **Did The Worker Suffer an Accident?**

4. There does not seem to be any dispute that the Worker suffered a 'workplace injury' arising whilst engaged by the Respondent Employer.<sup>4</sup> Whilst it is alleged by the Employer that the Worker was both provided with the relevant safety equipment and instructions to the relation to the risks and the control measures that were required to be observed while engaged in his employment, the Respondent Employer nonetheless has not been able to provide any evidence before the Tribunal today to support such a proposition. After over six years of time, one would therefore question why not and in any event there is not much point dwelling on that particular fact.
5. What we did have before the Tribunal today was the medical evidence of Dr Cecilo Redoblado, an Ophthalmologist, who had the occasion to examine the Worker on various occasions from the 19 May 2010 through to 30 August 2010.<sup>5</sup> Even in regard to the medical evidence that was provided by that person and as the transcript of proceedings will show, insofar as the Tribunal sought to make quite clear the issues that needs to be considered by the medical expert, the Tribunal is satisfied that the Worker did present to Dr Redoblado

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<sup>1</sup> According to the Application, on Deck F/V –Lu Hong Yu 224. The workman was injured while hauling a fishing line when it snapped and hit his left eye.

<sup>2</sup> Based on a weekly wage of \$140.38 per week.

<sup>3</sup> Particular having regard to the Directions and issues arising before the Tribunal on 11 July 2016.

<sup>4</sup> The Employer has sought to blame that incident on the Worker, though it provides no direct evidence to that effect, that he had somehow failed to follow directions by wearing safety goggles at the time of the incident.

<sup>5</sup> See Annexure KT3 to the Affidavit of Kemueli Tausia.

with an injury arising from the workplace accident and that the ongoing issues that at least existed up until the 30<sup>th</sup> of August 2010, were very much as a result of that workplace accident.<sup>6</sup>

6. Now following that, the Employer did provide two medical reports provided in 2013 and most recently in July 2016. Again there was no material issues that were raised within those reports that were put to Dr Redoblado that would have appeared to have altered the issues that he had determined on the 30<sup>th</sup> of August 2010. In fact when Counsel Kumar put it to the Doctor on several occasions, he maintained the position that he believed the presentation (of the Worker) as at the 30<sup>th</sup> of August, was very much arising as a result of workplace accident and that the condition of the Worker was likely to have arisen as a result of that workplace accident.

#### **Obligations under the *Health and Safety at Work Act 1996***

7. The primary obligation for the health and safety of workers in Fiji rests with the employer. While there are duties imposed on a Worker having regard to Section 13 of the *Health and Safety at Work Act 1996*, the primary obligation does rest with the Employer having regard to its obligations at Section 9 of the Act.
8. The Tribunal remains concerned at the conduct of the Employer having regard to the evidence of the Worker, where he stated that upon return to Walu Bay some 2 weeks after the date of the incident, it seems the Employer did not take the worker to seek medical attention upon arriving at Walu Bay. Instead, upon arrival, the worker claimed he was asked to unload fish off the vessel.

#### **Conclusions of the Tribunal**

9. This is an issue that should have been resolved some time ago. The Respondent Employer was invited to attend to attempt to resolve this matter on the last occasion that the parties appeared for Directions before the Tribunal.
10. Having regard to the totality of the evidence,<sup>7</sup> having regard to the fact that the Employer has failed to provide any material that would otherwise work to undermine the clear evidence of Dr Redoblado and having regard to his examinations from 19 May 2010 to 20 August 2010,<sup>8</sup> the Tribunal is satisfied that the case of the Applicant, Labour Office is made out.

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<sup>6</sup> The point is that there was nothing put to Dr Redoblado by Counsel for the Employer that shifted his assessment of the nature of the injury and the degree of impairment.

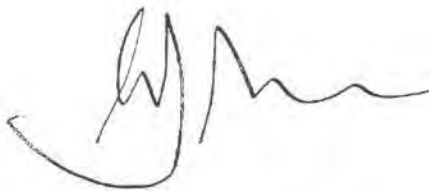
<sup>7</sup> Including all materials lodged by the parties in the Tribunal.

<sup>8</sup> It is a matter of record that at trial, the Employer was not in a position to provide any contemporaneous witness evidence, nor any medical expert evidence.

11. The Respondent should be liable to make good compensation for the injury that was suffered by the worker, both after the accident and in an ongoing capacity, even if it is the case that sometime between October 2013 up to the present date, that there may be competing views as to the ongoing nature of the injury that the worker suffered.
12. The point is that there is no evidence to challenge the fact that it was between the date of the injury in April 2010 up to at least October 2013, that the worker had suffered significantly as a result of the accident at sea.<sup>9</sup>

#### **Determination**

13. On that basis, the Tribunal will award the compensation sought in the amount of \$12,044.60 and in addition to that will impose in the interest of 5 % per annum calculated from the time in which the Application was made.
14. The Tribunal is going to award a cost amount of \$1,500.00 to be paid in addition to the compensation awarded. The costs of that which is being made available to the Applicant, stems from the preparation and costs of the Labour Office and Attorney General's Chambers over the period. It should be noted that this matter was previously listed for trial some time ago and it was the Respondent Employer again who was not ready to proceed. The Tribunal has previously made its position quite clear in relation to that particular matter.
15. An Order giving effect to the above decision, shall be prepared for release to the parties.



**Mr Andrew J See**  
**Resident Magistrate**



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<sup>9</sup> Though, it is recognised that Section 8 has a role to play in terms of the ongoing nature of the impairment and that any assessment is as regards to the degree of permanent, albeit partial impairment. It is also worthwhile noting, that there is no direct evidence that was adduced by the Respondent beyond that time, despite being given several opportunities to provide it to the Tribunal.