



Directions

Section 211 Employment Relations Promulgation

Title of Matter: Matai Rounds (Worker)
v
The Pearl South Pacific Resort (Employer)

Section: Section 211 Employment Relations Promulgation

Subject: Non Attendance of Employer's Representatives

Matter Number(s): ERT Grievance 157 of 2016

Appearances: Ms K Batibasaga for the Worker
Ms N Myers for the Employer

Dates of Hearing: 23 November 2016

Before: Mr Andrew J See, Resident Magistrate

Date of Decision: 23 November 2016

KEYWORDS: Allegations of discriminatory conduct based on trade union activity; Dismissal of a worker. Non attendance of Employer at Compulsory Mediation

Background

1. This matter was first listed before the Tribunal on 26 October 2016, on which occasion the Respondent Employer failed to attend. The matter was relisted for call-over on 4 November 2016 and Directions issued to the parties for the filing of documents. On that same date, the Solicitors on the record indicated that they would seek instructions from the Employer as to whether it would agree to a further attempt at mediation.
2. On 7 November 2016, Counsel for the Employer, Mr Goundar indicated that the Employer was amenable to submit to a compulsory mediation conference and the

matter listed for that purpose on 23 November 2016. In addition, the Employer was ordered to provide a written response to the Grievor's claim by 14 November 2016. While that preliminary submission has been filed, it does not appear to have been served on the Worker's representative.

3. When the matter was called in Suva, Ms Meyers, Counsel for the Employer, indicated that there were no representatives of the Employer available and that she held no instructions, so as to be capable of being able to settle the matter on the Employer's behalf.

Issues

4. The allegations contained within the grievance that has been referred to the Tribunal are set out within the Form 1 document lodged on 9 September 2016. The allegations are serious ones and will warrant the participation of the senior management of the Respondent, in order to achieve resolution. The matter is to be listed for mention before the Tribunal on Friday 25 November 2016 at 9.00am. Should the Company representatives fail to attend on this occasion, the matter will be simply listed for formal arbitration on a date to be advised.
5. It is the case that an Order for the payment of costs has today been issued against the Employer and it has been done so in recognition of the costs expended by the Worker in attending the Tribunal, in circumstances where the matter could not proceed. Should the Employer's representatives fail to attend the Tribunal on the next occasion, or to provide adequate instructions to Counsel, then it may be required that the General Manager and other persons named within the referral, will be compelled to attend, by virtue of the powers set out within Section 229(3) of the *Employment Relations Promulgation 2007*


Mr Andrew J See
Resident Magistrate

