



Employment Relations Tribunal

Interlocutory Decision

Title of Matter: Labour Officer
v
Steps Investments (Fiji) Ltd trading as Steps Night Club Nadi

Section: Sections 45, 59, 247 *Employment Relations Act 2007*

Subject: Failing to produce time and wages records; Failing to pay annual leave; statutory minimum requirements, payment on demand etc.

Matter Number: ERT Criminal Case No 30 of 2013
ERT Criminal Case No 31 of 2013

Appearances: Ms V Doge and Ms A Raitivi, Labour Office
Mr J Prakashan, for the Defendant

Date of Hearing: Tuesday 13 February 2018
Tuesday 26 June 2018

Before: Mr Andrew J See, Resident Magistrate

Date of Decision: 6 June 2019

KEYWORDS: Demand for Payment of Wages; Annual Leave; Time and Wages Records; Application for No Case to Answer.

Background

[1] There were two complaints that were initially brought before this Tribunal. Each complaint (CC 30/2013 and CC 31/2013) dealt with ten separate counts for breaches of the then *Employment Relations Promulgation 2007*. They are identified as follows:

CC 30/2013

- (i) Failing to produce on demand wages and times records contrary to section 45(4) of the *Employment Relations Promulgation 2007*; (One Count)
- (ii) Failing to pay a worker annual leave pay as required under section 59 being contrary to section 70(3) of the *Employment Relations Promulgation 2007*; (Four Counts)
- (iii) Failing to pay a worker the statutory minimum remuneration as per section 55(1) being contrary to section 55(2) of the *Employment Relations Promulgation 2007*. (One Count)
- (iv) Failing to comply with a written demand made by a Labour Inspector contrary to section 247(b)(ii) of the *Employment Relations Promulgation 2007*; (Four Counts)

CC 31/2013

- (i) Failing to produce on demand wages and times records contrary to section 45(4) of the Employment Relations Promulgation 2007; (One Count)
- (ii) Failing to pay a worker annual leave pay as required under section 59 being contrary to section 70(3) of the Employment Relations Promulgation 2007; (Four Counts)
- (iii) Failing to pay a worker the statutory minimum remuneration as per section 55(1) being contrary to section 55(2) of the Employment Relations Promulgation 2007. (One Count)
- (iv) Failing to comply with a written demand made by a Labour Inspector contrary to section 247(b)(ii) of the Employment Relations Promulgation 2007; (Four Counts)

[2]The charges brought by the Labour Officer, arise out of complaints made by the following former employees of the Defendant, in relation to work performed between the period 1 January 2009 and 31 December 2011:-

- (i) Kolinio Luvelolo;
- (ii) Atakisekise Ratu;
- (iii) Ponipate Raiumu Toga;
- (iv) Taufu Bale Waqalevu;
- (v) Sainivalati Qarau;
- (vi) Eparama Ravi;
- (vii) Tomasi Kanailagi;
- (viii) Tuka Kacilala;

[3]These complaints first came before the Chief Tribunal on 17 March 2014 and unfortunately appear to have languished for in excess of three years. A review of the files shows that on various occasions there was simply no appearance entered by the defendant employer and it is also noted that there has twice been a change of solicitors on the record. When proceedings eventually commenced before this Tribunal in 2017, an application was made by the Labour Officer to amend the Complaint CC 31/2013, by deleting the particulars as they related to Mr Taufu Bale Waqalevu.¹ That is, by deleting one count for failing to pay annual leave as required under Section 59 and one count for the failure to comply with a written demand for payment in accordance with Section 247 of the then Promulgation.

[4]In all, the Complainant called six witnesses to give evidence, that included five former employees and the Labour Officer charged with the task of investigating the complaints.

Submission of No Case to Answer

[5]At the conclusion of the prosecutor's case, Counsel for the defendant, indicated to the Tribunal that he wished to make a submission of No Case to Answer. Directions were subsequently issued for the filing of materials and the parties called back to the Tribunal on 2 May 2019, to clarify any outstanding matters.

¹ See amendments made by leave on 13 February 2018 (CC30/2013).

[6] Within the submissions filed by the Defendant on 5 September 2018, various case law has been cited to set the backdrop for how an application of this type should be determined. There are a couple of very obvious issues that arise out of the evidence thus far. Firstly, the claims by the five former employees underpinning the statutory demands, that they worked 6 days a week and for 11 hours a day, is inconsistent with the evidence of all of the former employees. That is, Messrs Luvelolo, Ratu, Qarau, Kanailagi and Toga all gave evidence before the Tribunal, that they worked for periods of less than six days per week. There are consequences that flow from these inconsistencies, pertaining to the counts of failing to comply with a written demand made by a Labour Inspector contrary to section 247(b)(ii) of the Employment Relations Promulgation 2007 as initially made.

[7] As has been previously stated in this Tribunal, a defendant employer is well within its rights for not submitting to a statutory demand, where it has no legal basis. That is, in the present case, there is no need to submit to a statutory demand in the case where the demand exceeds what is due. The problem for the defendant is that there are other aspects of the complaints where there remains a case to answer.

[8] For example, in relation to the complaints of failing to provide time and wages records, the defendant stated within its submissions relating to the evidence of the Labour Officer Mr Mataitoga:

He had demanded the employer to produce the wages and time records and the employer within those 14 days had given to him a police report stating that there was a robbery at the night club bar and the wages and time records that were kept there are lost

[9] That is simply incorrect. The demand notice was issued on 16 May 2013. Mr Mataitoga received the police report on 5 July 2013. That is well outside of the 14 day period. Further, all of the former employees, except for Mr Ratu, claim that they did not receive annual leave pay and all claim that they were not paid their over-time entitlements in breach of Section 55 of the then Promulgation.

Conclusions

[10] The Tribunal will dismiss the counts of failing to comply with a written demand made by a Labour Inspector contrary to Section 247(b)(ii) of the Employment Relations Promulgation 2007, as they relate to Messrs Luvelolo, Ratu, Qarau, Kanailagi, Toga, Ravi and Kacilala. In the case of the latter two former employees, this is done on the basis that there does not appear to have been any efforts by the Labour Office to prosecute these matters. The following counts remain before this Tribunal for determination:-

- (i) Failing to produce on demand wages and times records contrary to section 45(4) of the Employment Relations Promulgation 2007; (2 counts);
- (ii) Failing to pay a worker annual leave pay as required under section 59 being contrary to section 70(3) of the Employment Relations Promulgation 2007; (5 counts)

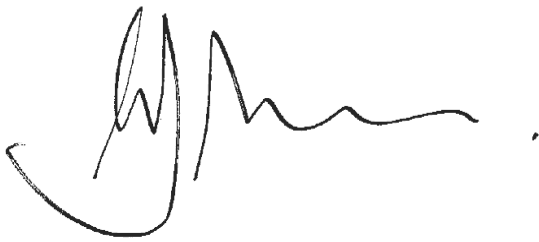
(iii) Failing to pay a worker the statutory minimum remuneration as per section 55(1) being contrary to section 55(2) of the Employment Relations Promulgation 2007.(2 counts)

[26] There is nothing within the submissions of the Defendant that justify the dismissal of these counts. The No Case to Answer has only been made out in part. The defence must now present its case in relation to the outstanding complaints that remain on foot.

Decision

It is the decision of this Tribunal:-

- (i) That the application for a finding of No Case to Answer, is granted in part only.
- (ii) The matter will be set down for continuation on 18 July 2019 at 10.00am.



Andrew J See
Resident Magistrate

