# Decision

**Employment Relations Tribunal**

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| **Title of Matter:** | **LABOUR OFFICER on behalf of Suluvenusi Lobolobo** | **(Applicant)** |
| | **v** | |
| | **PROFESSIONAL STEEL STRUCTURE & ROOFING** | **(Respondent)** |
| **Section:** | **Section 8 *Workmen's Compensation Act* 1964** | |
| **Subject:** | **Compensation for permanent and partial incapacity** | |
| **Matter Number(s):** | **ERT WC 120 of 2018** | |
| **Appearances:** | **Mr E Sailo, KLAW Chambers and Partners**<br>**No appearance for the Labour Office** | |
| **Date of Hearing:** | **Monday 2 December 2019** | |
| **Before:** | **Mr Andrew J See, Resident Magistrate** | |
| **Date of Decision:** | **4 December 2019** | |

**KEYWORDS: Section 8 *Workmen's Compensation Act* 1964; Claim for Compensation; Permanent partial incapacity.**

**CASES CITED:**

*Fiji Sugar Corporation Ltd v Labour Officer* [1995] FJHC39; Civil Appeal No 0010 of 1994, 17 February 1995.
*Labour Officer v Post Fiji Ltd* [2017] FJET 3; ERT WC97.2016 (13 February 2017)
*Labour Officer v Fiji Meat Industry Board* [2018] FJET9; ERT WC 107 of 2016 (12 February 2018).
*Raiwaqa Buses Ltd v Labour Officer* [2011]FJHC174; HBA23.2008 (18 March 2011)
*Travelodge Fiji Limited Suva v The Labour Officer for Karalaini Diratu* [1994] FJHC 180; (9 December 1994).

## Background

**[1]** This is an application made for worker's compensation in accordance with Sections 5 of the *Workmen's Compensation Act* 1964. The application filed on 26 March 2018, claims that on 3 May 2013, that the Worker suffered a personal injury by accident arising out of and in the course of her employment.

**[2]** So that the position of the Tribunal is crystal clear in this matter, it is worthwhile setting out within the chronology of events, the more significant issues arising out of the claim and the conduct of parties in proceedings:-

- Firstly, the Labour Office incorrectly set out within the particulars of its claim, that "the workman sustained injuries when an excess iron fell on his right hand while trying to fix villa board"[1]. The Workman and the Employer agree on the other hand, that the Worker was walking atop of the roof of a two storey building at the Fiji National University at Namaka, when he slipped and fell to the ground[2];

- The Labour Officer was initially claiming a 5 per cent permanent impairment, giving rise to a claim of $2,047.50;

- In light of that significant error and for the fact that the Worker had fallen approximately 12 metres, on 21 March 2019, the Tribunal asked that the earlier report of the medical examiner be reviewed;

- On 5 July 2019, leave was granted to the Labour Office to amend the claim, by taking into account the revised permanent impairment assessment calculated by the medical examiner, Dr Rokobuli. The orthopaedic surgeon assessed the whole person impairment (WPI) at 15 per cent, equating to an amount of $6,142.50;

- The matter was set down for hearing on 17 July 2019;

- On 17 July 2019, neither party was ready to proceed, with the Employer asking that it be given the opportunity to be represented in proceedings. That date was vacated and each party required to contribute to the costs of the Worker's attendance for that day;

- The matter was relisted for hearing on 30 August 2019;

- On 14 August 2019, the Solicitors for the Employer, made application for the vacation of the hearing date and requested amongst other things, that the Worker be required to submit to an independent medical examination to be facilitated by the Employer;

- On 26 August 2019, the Tribunal agreed to the vacation of the hearing date and issued orders directing the Employer to facilitate the medical examination; listing the matter for hearing on 13 November 2019.

- That following a further Notice of Motion filed by the Employer on 23 October 2019, the Tribunal agreed to again vacate the hearing date to 7 December 2019 (later amended to 2 December 2019) and provided clarification to the parties for its decision in doing so;

- As part of that clarification, Solicitors for the Employer were advised that if they had a further clash of dates on 2 December, that they were to advise the Employer and alternative lawyers appointed, given that there was adequate time to receive instructions[3];

[1] See Paragraph 4 to the Particulars of the original Statement of Claim filed on 26 November 2018.
[2] This is nothing more than carelessness (Refer WC 118 of 2018).
[3]It was understood that the primary reason for the further request to vacate the 2 December date, was because Mr Sailo was wishing to travel overseas to attend his nephew's passing out parade. That request was

- On 7 November 2019, Solicitors for the Employer wrote by email communication to the Registry, seeking a further seven days to file its medical report, but were subsequently advised that any late filing of documentation would now require the leave of the Tribunal[4];

- On 29 November 2019, the Solicitors for the Employer sought to file a Notice of Motion seeking the following Orders:-

    1. That further time be given for medical examination of the complainant.
    2. The Labour Officer to disclose the work history of the Worker, for the period on and from 3 May 2013 to 2 November 2018.

- Given that the documents were only received by the registry one business day before hearing, the Tribunal was not prepared to deal with the application unless made to the court on the scheduled day of hearing and the parties advised accordingly.

**Date of Hearing**

**[3]** At the day of hearing, Ms Raravula from the Lautoka Labour Office, entered an appearance on behalf of the Worker, to advise that Ms Kadavu who had carriage of the matter was not in attendance, nor able to appear, as "her travel arrangements had not been approved by her Director". That is, despite knowing that there was case that had been vacated and rescheduled several times and knowing the importance of having the matter disposed of, given the injuries were sustained by the Worker in 2013, the Labour Office decided that it was not going to send a representative[5]. It should be noted that neither did the Labour Office have the professional courtesy to alert the registry of its non-attendance prior to the day of hearing. The Labour Office had earlier nonetheless, made the point that its officers were not available to attend the earlier scheduled hearing on 6-7 December 2019, because "all the legal officers" would be attending the Attorney General's Legal Conference at that time.

**[4]** The Employer too, sought a further delay of proceedings, by initially asking for an adjournment to obtain an independent medical report and in addition, then providing the Tribunal with a medical certificate that claimed the company Director Mr Singh was suffering from an "acute coronary syndrome" and needed three days to rest. Dealing firstly with the request for a further delay in order to obtain the medical report, that request was refused. The primary reason for refusing that further request was that the Employer had been given since 26 August 2019, to have organised a medical examination. The terms of the Order and the directions imposed on the Worker were quite clear. That is, over three months was given to the Employer in order to facilitate an examination. If the Employer and its lawyers did not see the need to attend to that Order with some degree of urgency, then they collectively have themselves to blame for that. In relation to any other issues pertaining to the Worker's employment history, as that information was capable of being adduced as evidence in proceedings, given all of the events as described above, then in the interests of efficiency, justice and the need to establish the legal truth, all of the parties would have to 'make do'

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not seen as warranting a higher priority to that of the Worker's right to have a 2013 case for compensation, determined.

[4] Where was the medical report that the lawyers gave the impression that they were wishing to file? Clearly there was not one.

[5] The Legal Practitioners Unit will be forwarded this decision and can investigate the matter, if it believes that the conduct is improper.

with the best available evidence. For these reasons, the Tribunal proceeded to deal with the application and the matter was progressed in the absence of Ms Kadavu.

**The Case of the Employer**

Mahesh Prasad

**[5]** The first witness to be called by the Employer was Mr Mahesh Prasad, who was engaged as the Human Resource Manager for the Employer. Mr Prasad was not employed with the Employer at the relevant time and on that basis, the Tribunal informed Counsel, that if the Witness's evidence was only to be hearsay, then it would be pointless pursuing with his line of questions, where direct evidence was otherwise available.

Shalendra Chand

**[6]** Mr Shalendra Chand, was a former employee of the Employer and now has his own business, Buildsmore Construction, operating in Nadi. For the sake of expedience, the evidence of the Witness shall be summarised as follows:-

- At the time of the incident Mr Chand was employed as a Carpenter/Foreman;
- His responsibilities were to ensure that the work undertaken at the FNU project was "done properly" and employees were supplied with safety equipment, including safety boots and that this "was a safe working area";
- The works project where the incident took place was the FNU Namaka Campus, where the business was putting up a steel frame and roof for a double storey building;
- That the 'company rule' was not to access the roof of the building under construction until 10.00am each day, to minimise the surface moisture and possibility of slips;
- Working hours of employees were from 8.00am to 5.00pm;
- On the day of the incident, employees were having a pre-start briefing and when the Worker saw the company Director entering the site, "he rushed onto the roof barefoot";
- Mr Chand stopped the Worker and said to him words to the effect, "don't go now, go after 10.00am" and that "the boss would not worry about Mr Lobolobo waiting around until that time";
- The Worker was wearing no safety belt and as soon as he climbed up on the roof, he slipped;
- As soon as "we reached the Worker" he got up, he was holding his hand saying that it was broken; and
- That the company provided safety boots, glasses, harness, helmet and reflector jackets for its employees.

**[7]** When asked by the Tribunal, Mr Chand claimed that the Worker was not wearing safety boots at the pre-start briefing and that he was barefoot. The Witness claimed that this was not seen as unusual, because he knew the Worker was not going up the roof until 10.00am and so did not expect the Worker to be wearing safety boots at that time. In response to the question why the Worker did not respond to his direction not to go up on the roof, the Witness stated that the Worker had told him, "No I will go, the boss is here". The Witness claimed that on the day in question, that between 8.00am and 10.00am, that the Worker had no other work to do, so it was appropriate that he just wait around until the roof was dry. Mr Chand stated that as soon as Mr Lobolobo had reached the roof, within 2 minutes, he had slipped and fallen down. Mr Chand told the Tribunal that at the prestart safety briefing, in attendance were 3 to 4 employees, the only one of which he could name was "Esava".

**[8]** Mr Lobolobo challenged the Witness in relation to his account of what transpired. In the first instance, the Worker put to Mr Chand that several days before the incident took place, he was advised by the Director that he was to go to Suva that day at 10.00am and that the roofing needed to be partially affixed prior to that time, to avoid any possible wind and rain events. Mr Chand did not accept that to be the case. The Witness conceded after some prevarication, that he was not the company occupational health and safety (OHS) officer. It was put to Mr Chand, that he himself had on occasions taken off his safety boots whilst working on the roof. The Witness rejected that proposition. It was also put to the Witness, that there was no safety rope attached to the building, in which a lanyard or belt hook could be affixed and Mr Chand responded by saying that that there was a rope and that safety belts all were fitted with attachments for connecting to it[6].

**[9]** It was put to the Witness by Mr Lobolobo, that he was not the only person on the roof the morning of the incident and Mr Chand several times repeated the fact that it was just the Worker who had accessed the roof at that time. When asked by the Tribunal was a safety incident report provided to the Labour Office arising out of the event, the Witness claimed that a report had been completed[7]. In re-examination, the Witness told the Tribunal that only the company Director Mr Singh was due to go to Suva on the day in question.

Esava Doudouvono

**[10]** Mr Doudouvono was at the relevant time, the Foreman Welding Fabrication and has now been employed with the Employer for 20 years. Mr Doudouvono stated that the Worker Mr Lobolobo, was his "colleague" at the relevant time.

**[11]** The Witness gave the following evidence:-

- That following a brief prayer session and safety meeting, three workers (including Mr Lobolobo) climbed up on the roof the morning of the incident;
- That Mr Chand and himself, had informed those three employees of the work needed to be done that day;
- That the workers were to fit roofing screws;
- That Mr Chand and himself had asked the workers to climb up on the roof and see if it was dry enough to work;
- That the workers did so and returned to say that the roof was slippery;
- That as a result, "we told them not to go up and to wait til 10 o'clock";
- That the three workers went up onto the roof again approximately 30 minutes later;
- That he did not see whether the workers were wearing safety equipment when they climbed up onto the roof and on the second occasion had gone inside the building and did not see them returning to the roof;
- That he heard the workers shouting and when he went on top of the roof, two of the workers were on the roof, with Mr Lobolobo being on the ground;
- That the Worker had told him that he had taken off the safety boots when on top of the roof and that this was not normal procedure; and
- That the other two workers involved in the incident, have now left the company.

[6] Had the Labour Officer obtained an incident report or undertaken its own accident investigation, this claim would have been readily determined.

[7] If that was the case, the Labour Office should always source that document.

**[12]** In response to questions from the Tribunal, the Witness stated that:

- The job of affixing screws to the roof would take approximately one week;
- That on the first occasion that the three workers were on the roof to examine it for dryness, that they had been on the roof for approximately 4 to 5 minutes;
- That the time period between the first and second occasion when the workers went up to the roof, was approximately half an hour;
- That on the second occasion, the workers had been up on the roof for approximately 10 minutes when the incident took place.

**[13]** In response to questioning from Mr Lobolobo, the Witness stated:

- That he accepted that the Worker was required to go to Suva at 10.00am on the day of the incident;
- That he was unaware if any safety rope had been in place, for workers to attach safety belts, or harnesses.

**The Case of the Worker**

**[14]** According to Mr Lobolobo, he claimed that the building he had been working on at the FNU location, was approximately 60 metres in length and that his boss (the Director Mr Santok Singh) had been "hassling us" and "ordering us like animals". Mr Lobolobo said that he was afraid of Mr Singh for that reason. The Witness told the Tribunal, that the day before the incident he had been instructed to "tag all joins" so that the "roof doesn't fly". The Worker agreed that he had taken off his boots when on top of the roof because it was "too shiney". Mr Lobolobo stated that the roof supervisor Mr Shalen Chand, "always took of his boots".

**[15]** According to the Worker, he has only worked for a limited time following the accident, because of the pain he experiences to his hand. That work consisted of fishing with his brother in Nabowalu and a short stint of approximately three months at the China Railways; although in the case of the latter job, he had to cease work because of the pain that it caused.

**[16]** In cross examination, the Worker stated that there was no prayer session on the day of the incident, because of the need to complete the tasks early so he could go to Suva with his Director. Mr Lobolobo said that he could not work on the roof on the day in question with his safety boots, and so had to take them off. The Worker claimed that he himself had provided his own safety boots and not the Employer and that the day of the incident, he was walking along the apex of the roof when he fell. He claimed that "safety boots were more slippery than bare feet". The Worker said that the distance that he fell was estimated at 12 metres. When questioned by Counsel in relation to the subsequent diagnosis of hernia, the Worker explained that this presented during a medical examination and claims that the treating doctor at that time had asked "did you fall?". Mr Lobolobo conceded that it was only approximately two years ago that he began complaining of the hernia and said that it was not related to his work at China Railways, which essentially involved light work.

**Analysis of the Issues**

**[17]** Despite the obvious procedural distractions brought about through the conduct of the parties to this litigation, it is important not to lose sight of what the central issue at hand is and that is, whether Mr Suluvenusi Lobolobo was injured in the course of his employment and thereby capable of seeking compensation under the *Workmen's Compensation Act* 1964. From an evidentiary point of view, the case of the Worker is quite clear cut. He had been working for the Employer for several

months and had on the day in question been asked to undertake the partial fixation of the building roof prior to 10.00am, so that he could travel that day to Suva with the company Director. Twice that morning, the Worker along with two other employees, climbed up onto the roof. On the second occasion whilst undertaking his task, the Worker fell from the apex and landed on the ground, suffering a closed intra-articular fracture to this right wrist[8]. It was the initial medical report of the examining doctor, that the Worker's inguino-scrotal hernia, was not related to the work that he had performed, but more likely due to other work that he may have performed. The revised assessment undertaken by Dr Rokobuli, was that the Worker was suffering from a whole person impairment of 15 per cent.

**[18]** The conduct of the Employer in this matter has been extraordinary, particularly in relation to the many attempts to vacate hearing dates and its failure to undertake a medical examination of the Worker, despite been given numerous opportunities and many months to do so. The fact that its Director was unable to attend the hearing and Counsel for the Employer had provided a medical certificate to that effect, is further conduct that is viewed quite suspiciously in these circumstances. On a different occasion, the certifying doctor could have been called to verify the integrity of the certificate. The ability of litigants to gain access to medical certificates to avoid attendance in court, is far too common a practice within this jurisdiction and at some juncture the medical regulatory body should investigate these sorts of concerns.

**[19]** The evidence of the roofing supervisor Mr Shalendra Chand, himself now a contractor, was viewed as untruthful. The Witness gave the Tribunal the impression, that he was deliberately trying to mislead and cover up the conduct of the Employer. This was most evident when his evidence was contrasted against that of Mr Doudouvono, in relation to the number of workers who had climbed up onto the roof, the number of times they did so and the length of time in which the workers remained on the roof on those occasions. Mr Chand's account of a barefoot worker being present at a work pre-start meeting also seems ludicrous and was contradicted by Mr Doudouvono's evidence. The Tribunal is well aware through cases before it, that the Fiji National University has dedicated health and safety resources, and it is too far-fetched to imagine that they would countenance such conduct by their contractors. The Tribunal also believes that it was more than likely the case, that the Worker himself had provided his own safety boots. Further, it is more than likely that the boots the Worker had in his possession, may not have been specifically designed for working on roofs and sloping surfaces. That issue needs to be monitored by the Ministry, as the worker's compensation data shows conclusively, that 'falls from heights' is a major workplace hazard and significant contributor to lost time and injury in Fiji.

## Was Mr Lobolobo a Worker for the Purposes of the Act?

**[20]** Section 2 of the *Workmen's Compensation Act* 1964 defines workman (Worker) to mean:

> *any person who has, either before or after the commencement of this Act, entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, or otherwise, whether the contract is expressed or implied, is oral or in writing, whether the remuneration is calculated by time or by work done, and whether by the day, week, month or any longer period:*
>
> *Provided that the following persons are excepted from the definition of "workman":-*

[8] See Medical Report of Dr Mark Rokobuli, dated 27 March 2019.

*(a) a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, not being a person employed for the purposes of any game or recreation and engaged or paid through a club;*
*(b) an outworker;*
*(c) a member of the employer's family dwelling in the employer's house or the curtilage thereof; or*
*(d) any class of persons whom the Minister may, by order, declare not to be workmen for the purposes of this Act.*

**[21]** The Tribunal is satisfied that the Worker was a workman for the purposes of Section 2.

Was the Respondent the Employer of the Worker?

**[22]** Section 3 of the Act, reads:

*"employer" includes the Government and any body of persons corporate or unincorporate and the personal representative of a deceased employer, and, where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the workman whilst he is working for that other person; and in relation to a person employed for the purposes of any game or recreation and engaged or paid through a club, the manager, or members of the managing committee of the club shall, for the purposes of this Act, be deemed to be the employer;*

**[23]** The Employer is not disputing that it was the Employer and is therefore captured by the definition at Section 3 of the Act.

Did the Worker Suffer a Compensable Injury?

**[24]** Section 5(1) of the *Workmen's Compensation Act* 1964 provides as follows:

*If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workmen, his employer shall, subject as hereinafter provided be liable to pay compensation in accordance with the provisions of this Act ....*

**[25]** There are three requirements to satisfy Section 5(1) of the *Workmen's Compensation Act* 1964.[9] These are:-

(i) Personal injury by accident;
(ii) Arising out of employment;
(iii) In the course of employment.

*Did the Worker Suffer A Personal Injury by Accident?*

**[26]** Pathik J in *The Fiji Sugar Corporation Limited v Labour Officer*[10] set out in detail what was to be meant by the expression "injury by accident". The medical evidence of Dr Rokobuli was that the

[9] *Raiwaqa Buses Ltd v Labour Officer* [2011]FJHC174; HBA23.2008 (18 March 2011)
[10] [1995] FJHC 39; Hba0010j.94b (17 February 1995)

Worker had suffered a closed intraarticular fracture of the right wrist. On further review, the Worker was seen to be suffering from an inguinal hernia and there is no subsequent opinion expressed by Dr Rokobuli, that the onset of this hernia may not have come about because of some body trauma. In fact, the evidence of the Worker was that at some stage during his medical treatment, that was the opinion of one of his medical practitioners. That this may have been the case, is not regarded as far-fetched. For it has long been observed that :

> *In a great many cases (of inguinal hernia) it is of course impracticable to trace the existing cause of rupture…..the class which contains the highest numbers ..is that which comprises those who have suffered from lifting heavy weights. Falls, coughs, asthma and others, are fruitful causes of this, as indeed of other forms of hernia[11].*

**[27]** The Tribunal is satisfied based on the medical reports provided, that the personal accident by injury did take place.

*Was the Worker's Injury by Accident Arising out of Employment?*

**[28]** Pathik J in *Travelodge Fiji Limited Suva v The Labour Officer for Karalaini Diratu[12],* sets out the relevant considerations when determining whether or not a worker suffered an accident arising out of employment. His Honour relied on Lord Sumner's characterisation in *L & YR v Highley[13]* to apply the following test:

> *".... Was it part of the injured person's employment to hazard, to suffer, or to do that which caused his injury? If yea, the accident arose out of his employment. If nay, it did not, because what it was not part of the employment to hazard, to suffer, or to do cannot well be the cause of an accident arising out of the employment. To ask if the cause of the accident was within the sphere of the employment, or was one of the ordinary risks of the employment, or reasonably incidental to the employment, or, conversely, was an added peril and outside the sphere of the employment, are all different ways of asking whether it was a part of his employment that the workman should have acted as he was acting, or should have been in the position in which he was whereby in the course of that employment he sustained injury.*

**[29]** As his Honour further stated:

> *The expression is not confined to the mere "nature of the employment" as formerly held in several cases, but it "applies to the employment as such - to its nature, its conditions, its obligations, and its incidents.*

**[30]** The evidence of Mr Duoduovono was that three workers were told to climb the roof and ascertain whether it was safe to work. His evidence was that initially the workers had advised that it was slippery and approximately half an hour later all three workers returned to commence work on the roof. Mr Duoduovono was aware of that fact, because in response to calls for help, he himself climbed up on the roof to find two workers still on the roof, with the third Mr Lobolobo, having fallen to the ground. The Tribunal does not accept that the workers were ordered not to

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[11] *The British and Foreign Medical Review on Quarterly Journal of Practical Medicine and Surgery.* Volume XIV, July -October 1842, London.
[12] [1994] FJHC 180
[13] (1917) AC 352 at 372

recommence work when they did and sees the claim that they were directed to wait until 10.00am to start, as nothing more than a contrivance created by the Employer as part of its case.[14] The Tribunal is satisfied that this second limb has been made out. The Worker along with two co-workers were doing that which they were employed to do.

*In the Course of Employment*

**[31]** In *Travelodge,* Pathik J stated the two conditions which must be fulfilled before an accident can be said to have occurred "in the course of employment" are:

> *(a) the accident must have occurred during the employment of the workman and*
>
> *(b) it must have occurred while he was doing something which "his employer could and did, expressly or by implication, employ him to do or order him to do"*

**[32]** The Tribunal is satisfied that these two elements have been satisfied. It is clear that the incident occurred after work had commenced during the working day and it is also accepted that based on the evidence of Mr Doudouvono and the Worker, that there was an expectation that Mr Lobolobo go to Suva at 10.00am that day. The three workers were clearly following the instructions of their supervisors. They had been told to go up onto the roof firstly to check for its condition and the second time, obviously to perform their duties. Mr Chand's evidence is totally rejected as being dishonest and deliberately misleading. It appears nothing more than an attempt to pervert the course of justice. In any event the wide nature of Section 5 of the Act, would make this a compensable injury even if Mr Chand's version of events was to be believed[15], which of course, it is not.

## Conclusions

**[33]** The case of statutory compensation against the Employer has been made out. The Tribunal does not accept that at the time of the incident in 2013, that the Employer had in place an effective health and safety management system. There is sufficient evidence to come to that conclusion based on the evidence of the two supervisors who were present on the day of the accident. It is noted within the original LD Form C6, that the Worker had outstanding unpaid wages as at 6 December 2017. Hopefully, if that was the case, the relevant bodies would be pursuing that issue. The Tribunal awards the Worker the amended compensation claim of $6,142.50, together with interest calculated at 5 per cent for two years, based on the time in which the original Notice of Claim was made ($629.65). In accordance with Section 236 of the *Employment Relations Act* 2007, the Worker shall also be provided with the costs for his attendance at hearing, which is nominally assessed at $75.00.

**[34]** Finally, as indicated at the outset, the failure of the Labour Office to fulfil its statutory duty both to this Tribunal and more importantly to the client it represents, is a dreadful indictment on that Office. The fact that the Labour Office simply abandoned the Worker who has been waiting since 2013 to achieve his statutory entitlement, having fallen 12 metres from a building roof top, is simply unfathomable. That its employees can nonetheless make themselves available to attend a legal

[14] The fact that Mr Doudouvono initially mentioned that a 10.00am starting time to work on the roof was imposed and then later on admitted to having asked at the start of the working day for workers to go up and see if the roof was safe to commence work, supports that belief.

[15] The evidence does not support any argument that the Worker had engaged in serious and wilful misconduct.

conference several days later, having asked for the hearing to be vacated on those dates, speaks amplitudes for its priorities in this regard.

## Other

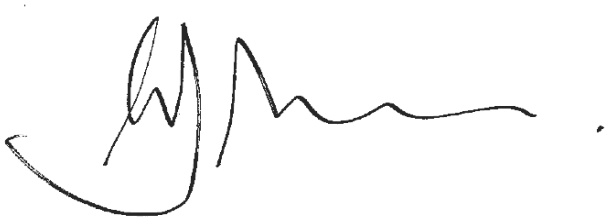
**[35]** Fall from heights is a major workplace hazard in Fiji and is the cause of many workplace accidents. A review of the worker's compensation data readily demonstrates that fact. Workers who are deployed to work at heights, must be given proper safety induction and there needs to be systems of work put into place to avoid such accidents. Where was the safety scaffolding barricading on the roof top? That would have been one additional measure that could have easily been put into place. There was also no evidence that a high line rope operation system was in place. Other measures would have included anchor points where work belts or lanyards could have been attached[16] and the implementation of safety footwear that was specifically designed for working on roofs. These sorts of accidents are avoidable and persons who do not comprehend the importance of health and safety in such situations, should not be in the position of supervising others at the workplace.

## Decision

**[36]** It is the decision of this Tribunal that:-

(i) Professional Steel Structure and Roofing pay compensation to the Labour Officer on behalf of Suluvenusi Lobolobo in the amount of $6,772.15, within 28 days hereof.

(ii) Professional Steel Structure pay out of pocket expenses (costs) to the Labour Officer on behalf of Suluvenusi Lobolobo in the amount of $75.00, within 28 days hereof.




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

**Corrected Decision.**

[16] That is an issue of building design and a responsibility for those charged with the task of building design to include for the safety of those involved in working in the construction of those plans.