

**THE EMPLOYMENT RELATIONS TRIBUNAL**  
**AT SUVA**

**Case No. 17/2024**

**BETWEEN : LABOUR OFFICER for and on behalf of ASERI TUBALEVU**  
**Plaintiff**

**AND : GRID SECURITY SERVICES (FIJI) PTE LIMITED**  
**Defendant**

Hearing: 19 November, 2024

Appearances:

Labour Officer for the Plaintiff

Defendant not present and represented

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**FORMAL PROOF**

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**Introduction**

On 22 February, 2024, the Labour Officer had filed the Summons and Charges against the Grid Security Services (Fiji) Pte Limited (Director) of the Accused in the Employment Relations Tribunal. The Accused was not present in Tribunal to the following counts contained in the complaint made by the Labour Officer. On 22 February, 2024, the Labour Officer file the Affidavit of Service.

**Count 1- Failing to produce on demand time and wages records contrary to Section 45(4) of the Employment Relations Act 2007 (Act)**

**Count 2- Failing to comply with a written demand made by a Labour Inspector contrary to section 247 (b) of the Act.**

The matter was listed for mention for 10 times but the defendant had not made any effort to attend the court. The defendant did not provide any reason why he could not able to come to Tribunal. Hence the matter was listed for formal proof.

The charges relate to a complaint made by Aseri Tubalevu (Worker) on 10 May, 2023, claiming wages for overtime and meal allowance from the Employer.

**Aseri Tubalevu.**

The Worker stated that he worked for the Employer from 19 January, 2022 to 11 April, 2023, as a security guard and was paid \$4.00 per hour. He further stated that he had worked from Monday to Sunday from 7 am and finished at 7pm. The Worker had earned **FJD 7,008.262** annually, and had been paid fortnightly. He stated that he did not signed employment contract. The worker said that the Employer did not pay his overtime meal allowance and unauthorized deductions pay. He said that he had lodged the complaint with the Ministry of Employment Productivity and Industrial Relation concerning his overtime pay, meal allowance and unauthorized deduction. The Worker stated that the Employer had provided pay slip.

**Case for the Labour Officer**

Labour Officer Ms. Sangita Lata, gave evidence for the Worker. Ms. Chand stated that she was an investigating officer in this case. She said during investigation she had complied with the procedures. The witness said that the complainant lodged the complaint with the Ministry of Employment Productivity and Industrial Relation, henceforth the Demand Notice dated 29 June, 2023, was issued to the defendant for Production of Wages and time records. The witness further stated that the defendant did not produce any wages records and the calculation was done based on workers statement reason being the Defendant did not produce any wages records.

According to the Labour Officer, after the calculation was done, a demand notice for payment was issued to the Defendant wherein as per the notice, payment was to be made within 7 days of service. The Defendant failed to response. The Labour Officer said that after she had calculated the overtime, meal allowance and unauthorized deductions she had sent out a demand notice to pay on 6 December, 2023, amounting \$7,008.26 and the Employer did not comply with the demand notice for payment of wages.

The Employment Relations Act 2007 (ERA) allows the case to be heard if a party is absent without showing good cause. Sec 233 of ERA provides that;

*If, without good cause shown, a party to proceedings before the Tribunal or the Court fails to attend in person or by representation, the Tribunal or the Court may act as fully in the matter before it as if that party had duly attended or been represented."*

This is further supplemented by section 238 (1) and (2) (a) of the ERA: that is, if further practice directions are sought pursuant to the *Magistrates Court Rules*. To that end, here, **Order 30, Rule 3** will apply where it states that:-

"ORDER XXX – NON-ATTENDANCE OF PARTIES AT HEARING

*Of defendant*

*3. If the plaintiff appears, and the defendant does not appear or sufficiently excuse his absence, or neglects to answer when duly called, the court may, upon proof of service of the summons proceed to hear the cause and give judgment on the evidence adduced by the plaintiff, or may postpone the hearing of the cause and direct notice of such postponement to be given to the defendant".*

The Tribunal has provided ample opportunity to the defendant to appear and make representation in this case. The defendant's absence indicates that the Defendant is not interested in defending their interest in this case. It was on this basis, the Tribunal decided to have the matter adjudicated and determined on the merits of the claims by way of formal proof.

The Labour Officer marked following documents as exhibits.

P1; Labour Complaint Form dated 10 May, 2023

P2; Demand Notice dated 29 June, 2023

P3: Arrears of Wages Calculation dated 27 November, 2023

P4: Demand Notice for payment of Wages 6 December, 2023

P5: Certificate of Registration of Business

P6; Copy of Worker's pay slip

Following provisions of the act are relevant to the offence of failures to produce wages and time records on request.

The particulars in relation to the complaint are quite clear. The complaint relates to the time and wages record of Mr. Aseri Tubalevu. Based on Exhibit P4, the records that were maintained at the relevant time, were not in a form as prescribed by Section 45(1) of the Act that states:-

*An employer who employs a worker whose wages or rates of wages are prescribed or paid under an employment contract or under this Act must keep a record (called the wages and time record) showing, for each worker—*

*(a) the name of the worker;*

*(b) the date of birth;*

- (c) the worker's address;*
- (d) the kind of work on which the worker is usually employed;*
- (e) the employment contract under which the worker is employed;*
- (f) the classification or designation of the worker according to which the worker is paid;*
- (g) a daily attendance register incorporating the hours between which the worker is employed on each day, and the days of the worker's employment during each week;*
- (h) the wages paid to the worker each week and the method of calculation;*
- (i) any payment made under Part 11; and*
- (j) other prescribed particulars.*

The Tribunal finds that the employer did not maintain proper wages records. The records were not provided to the Ministry of Employment Productivity and Industrial Relation upon issuing of the demand notice by the Labour Officer. The Labour Officer stated that she kept approaching the Employer because the worker confirmed that the Employer had records but did not want to release the wages and time record.

Resident Magistrate Ms. Seini. K. Puamau in a case of **State v Narau [2020] FJMC 44**; Criminal Case 333 of 2016: stated that:

*"For a trial in absentia to be justified, what is decisive is whether the facts of the case show unequivocally that the applicant was sufficiently aware of the opportunity to exercise these rights in the context of the specific proceedings instituted against him and whether he might be considered to have waived his right to appear in court. In the case of any notification this right can neither be seen to have been clearly waived nor exercised effectively."*

By Demand Notice dated 29 June, 2023, marked P2 the Labour Officer had requested the Employer to produce wages and time records.

The Tribunal finds that the wages and time records were not properly maintained by the Employer as requested by the Labour Officer.

In the circumstance, I hold that the Employer is guilty of Count 1 as charged.

## **Count 2**

Section 247 (b) of the Act is relevant to this count.

Section 247 (b) upon demand in writing by the Permanent Secretary a Labour Officer or a Labour Inspector, fails within 7 days of the demand to pay any wages due to a worker, commits an offence.

Section 4 of the Act interprets wages to mean all payments made to a worker for work done in respect of the workers contract of service.

By the letter, dated 6 December, 2023, marked the Labour Officer has demanded the Employer to pay \$7,008.26 as total wages due to the Worker.

The Demand Notice for Payment of Wages was served to the Defendant on 6 December, 2023, but the Defendant did not made any attempt to resolve the matter in good faith. . The Defendant did not make any attempt to attend the court when the matter was listed for mention.

The Employer failure to submit records had promoted the Labour Officer to calculate the total amount due to the Worker as wages, based on the Workers statements.

Employer has a contractual and statutory obligation to pay wages to the Worker. Section 42 (a) of the Act provides that an object of Part -6 of the Act is to ensure the payment of wages at set intervals.

As set out in section 247 (b) of the Act, the Employer is statute bound to comply with the demand to pay wages due to the Worker. The Employer had failed to pay wages as demanded.

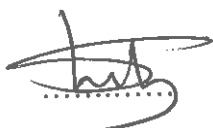
I hold that the Employer is guilty of Count 2 as charged.

The Tribunal is unaware of any previous convictions of this Accused.

Section 256 of ERA provides a maximum fine of FJD 50,000.00 for count 1. The maximum penalty for count 2, as per section 247(b), is FJD 100.000.00

I make the following orders considering the aforementioned circumstances of this case.

1. For the offence of failing to produce wages and time records required to be kept under section 45(1) of the employment Relations Act (ERA 2007); I fine the Accused FJD \$600.00.
2. Failing to pay arrears of wages upon demand in writing contrary to Section 247 (b) of the Employment Relations Act 2007. The Tribunal ordered that the Defendant to pay the Worker a sum of \$7,008.26 and such amount to be paid within 21 days of this decision.



**Aleem Shah**

**Legal Tribunal.**

**25 July, 2025**

