

THE EMPLOYMENT RELATIONS TRIBUNAL
AT SUVA

Case No. 33/2024

BETWEEN : LABOUR OFFICER for and on behalf of KISUN CHAND

Plaintiff

AND : PETER NAND T/A PIONEER SECURITY SERVICES

Defendant

Hearing: 7 May 2025

Appearances:

Labour Officer for the Plaintiff

Defendant not present and represented

FORMAL PROOF

Introduction

On 21 June, 2024, the Labour Officer had filed the Summons and Charges against the Pioneer Security Services (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 2 July 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 5 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 Kisun Chand (Worker) on 1 August, 2023, claiming wages for public holiday pay, overtime and meal allowance from the Employer.

Kisun Chand.

The Worker stated that he worked for the Employer from 17 June, 2019 to 30 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 3pm and finished at 11pm. The Worker had earned **FJD 5,612.74** annually, and had been paid fortnightly. The worker said that the Employer did not pay his overtime meal allowance, public holiday pay. He said that he had lodged the complaint with the Ministry of Employment Productivity and Industrial Relation concerning his over time, public holiday pay and meal allowance. The Worker stated that he was not provided any pay slip during he was employed.

Case for the Labour Officer

Labour Officer Ms. Sarika Devi, gave evidence for the Worker. Ms. Devi stated that she was an investigating officer in this case. She said during investigation she had complied with the procedures. The Labour Officer further stated that on 27 September, 2023, email was sent to the Employer for a good faith meeting to resolve the matter in good faith, but the Employer did not attend and the matter was referred for adjudication. The witness said that the complainant lodged the complaint with the Ministry of Employment Productivity and Industrial Relation, henceforth the Demand Notice dated 4 August, 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 he had calculated the overtime, meal allowance, public holiday pay he had sent out a demand notice to pay on 29 May, 2024 amounting \$5,612.74 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 1 August, 2023

P2; Demand Notice dated 4 August, 2023

P3: Arrears of Wages Calculation Form

P4: Demand Notice for payment of Wages 29 May, 2024

P5: Certificate of Registration of Business

P6: Complainants Statement dated 29 May, 2024

P7; Investigating Officers statement dated 7 June 2024

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 Kisun Chand. 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.

By Demand Notice dated 4 August, 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 29 May, 2024, marked the Labour Officer has demanded the Employer to pay **\$5,612.74** as total wages due to the Worker.

The Demand Notice for Payment of Wages was served to the Defendant on 29 May, 2024, but the Defendant did not make 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.

- a. 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 \$300.00.
- b. 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 \$5,612.74 and such amount to be paid within 21 days of this decision.



Aleem Shah

Legal Tribunal.

25 July, 2025

