

**IN THE EMPLOYMENT RELATIONS TRIBUNAL
AT SUVA**

ERT Criminal Action No's. 35, 64, 65, 66, 67 of 2024

BETWEEN: LABOUR OFFICER on behalf of ALL WORKERS

COMPLAINANT

**AND: ADVANCED DIGITAL TECHNOLOGY FIRE & SECURITY PTE
LIMITED**

EMPLOYER

Appearance

Ms. Naidu. S, Labour officer, for the Complainant

Mr. Keteca. R for the Employer

Date of Hearing: 17 March, 2025

Date of Determination: 6 June, 2025

DETERMINATION

Introduction

1. A plea of not guilty has been entered to the charge of failure to pay arrears of wages upon demand in writing contrary to section 247(b) of the Employment Relations Act 2007.
2. Labour officer claimed that Employer failed to comply with the notice dated 26 March 2023 demanding the payment totaling \$39, 952.96 as arrears of wages to on behalf of all workers for the period 30 May 2020 till 29 May 2023.
3. Ms. Juliana Katofono - Labour Inspector, testified on behalf of the Complainant. The following documents were marked as exhibits:
 - (i) **L1:** Inspection Report Form dated 26 April 2023
 - (ii) **L2:** Workplace Inspection and Interview Form dated 19 April 2023
 - (iii) **L3:** Company search
 - (iv) **L4:** Demand Notice dated 4 July 2023
 - (v) **L5:** Arrears of wages calculation form

- (vi) L6: Demand notice for payment of wages dated 3 March 2024, 4 March 2024, 5 March 2024, and 6 March 2024, all served on 26 March 2024.

Complainant's case

4. As a labour inspector, Ms. Juliana Katofono conducts workplace inspections, checking wages and time records, payslips and employment records. A general workplace inspection was conducted in 2023. Workers were interviewed to check on wages and time records. Face to face interviews were conducted after the inspection.
5. Employer was served with Demand Notice dated 4 July 2023 to provide wages and time records within 14 days. These documents were produced after a few months. Full records were provided upon which the calculation was made on workers overtime and meal allowance that was due. Subsequently, five demand notices for payment of wages was served, all on the same day (one demand notices for each case). The employer did not make any payment. A good faith meeting was conducted however, Employer was reluctant to pay arrears claimed.
6. During cross-examination, the labour inspector denied claims that the worker interview form was fabricated and confirmed that the Employer's records were clear. It was also noted that workers had signed a petition, which was acknowledged by the witness. The labour inspector denied allegations of malicious prosecution.

Employer's case

7. Employer called two witnesses: a security officer and the General Manager Operations.
8. Mr. Mosese Nasaucalayawa gave evidence that he did not sign any document against ADT and denied that the signature on the form is his. He stated that he spoke to labour inspector about Ayaan Security for non payment of wages during COVID, not ADT, as he was employed with ADT only after COVID.
9. Mr. Trevor Eliot, the General Manager Operations gave evidence about the services provided by the company, employing about 40 – 45 staff in 24 hour shift. In 2020, there was a petition waiver because of COVID 19 and businesses closing down. Customers were closing their contract. There were guards who wanted to do more work but had to share hours so the company asked them to go to the labour office, which stated that it was between Employer and the workers. No issues are pending with the Ministry of Employment, FIRCS or FNPF.
10. During cross-examination, he confirmed that he did not go to the labour office regarding the petition, but sent workers for advice. He stated that workers knew what they were signing and wanted to work more overtime at regular pay. He also mentioned there was another waiver for 2021, but he did not have a copy with him.

Analysis of the evidence

11. To establish an offence under the Act, the relevant test is one of being satisfied beyond reasonable doubt.
12. The issue before this Tribunal is that of failure to pay wages on demand.
13. I have no doubts that the five demand notices were served on the Employer.
14. The Tribunal has reviewed the Arrears of Wages Calculation Forms provided by the Labour Officer and is not convinced that these payments are due and payable for the workers. As stated in *Labour Officer v Haque* [2015] FJET 2; ERT Criminal Case 17.2014 (2 July 2015), *"The threshold test at this point, appears though to be of a higher order than that at least in a prima facie sense, as in the issuing of a prescribed Penalty Notice. Based on the facts before the Tribunal, the issue is not so much whether a demand has been made, but whether or not it arises out of a "demand to pay any wages due to a worker". If in fact, there are no wages due at law, it is hard to comprehend how there could be a failure to submit to a demand, where such demand would otherwise be an invalid one."*
15. This precedent reinforces that a demand is valid only if wages are legally owed, which is not established in this case.
16. This Tribunal has considered the difference between civil recovery (section 214) and criminal liability (section 247) in wage disputes. Since there is no evidence of civil proceedings under section 214, unpaid wages must first be established before enforcement can begin. It would be nonsensical to penalise a company first then later determine if unpaid wages are owed.
17. The Tribunal finds that the evidence presented does not favour the Complainants. The arrears of wages claimed are substantial including:
 - Action No 35/2024 - 27 counts totaling \$39, 952.96.
 - Action No 64/2024 - 24 counts, totaling \$36, 289.97.
 - Action No 65/2024 - 18 counts totaling \$23, 818.92
 - Action No 66 of 2024 - 13 counts totaling \$33, 114.95
 - Action N0 67 of 2024 - 13 counts totaling \$33, 907.27.

However, the strength of these claims depend on supporting testimony and evidence which are lacking.

18. Each count relates to a worker who allegedly was not paid overtime and meal allowance. However, no worker was called to give evidence and their interview statements/ complaint statements were not provided. It begs the question of whether proper instructions have been

obtained from these workers to institute these actions on their behalf. Moreover, the inspection report form issued on 5 August 2020 (L1) shows that no workers were interviewed (*M: 0, F: (blank)*).

19. Further, there was only one interview statement in the Disclosures, this of the employer witness who denies that he lodged a complaint against the Employer and that this was not his signature. Given that the date of the statement corresponds with the period **after** COVID, it is likely that it was indeed made by the witness despite his denial. Without worker testimony or documented statements, proving that wages were unlawfully withheld becomes difficult.
20. Furthermore, Tribunal found the Calculation Forms unclear, making it difficult to assess the claims. It is the responsibility of the labour officer to thoroughly review and explain each page of the summited document rather than simply tendering them as a bulk submission.
21. Labour officer also faces another hurdle as the earliest charge was filed on 1 July 2024 whereas the demand notices were served on 26 March 2024. The charges clearly cannot be maintained as they were filed outside of the one year period as stipulated under section of 262 of the Act.
22. For the reasons above, all five Complaints must fail. The Tribunal dismisses all five Complaints the subject of these proceedings.



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Ms. Mary Motofaga
Resident Magistrate
6 June, 2025