

IN THE STATUTORY TRIBUNAL, FIJI ISLANDS
SITTING AS THE EMPLOYMENT RELATIONS TRIBUNAL

Workmen's Compensation No. 51 of 2012

BETWEEN: THE LABOUR OFFICER on behalf of
Dependents of the deceased, DEV NADAN PILLAY

Applicant

AND: LAND TRANSPORT AUTHORITY

Respondent

Counsel: Ms S Khan, for the Applicant
Ms R May, for the Respondent

Date of Hearing: Tuesday 12 February 2013

Date of Judgment: Tuesday 12 February 2013

DECISION

Ordinarily in matters of this type, it would only be appropriate to allow all parties the right to present all evidence before the Tribunal, prior to the making of a decision.

On this occasion however, there are special circumstances that justify the making of a decision at this time.

Firstly, it is the case that the witnesses to be called by the employer will not be able to give any direct evidence of the health and safety systems in place at the relevant time, nor the nature of the deceased's physical job demands.

The evidence is overwhelming that the deceased worker had been suffering a serious medical condition for a lengthy period of time. So much has been made clear by the deceased's personnel leave file.

Ms. May for the employer has provided the Tribunal the relevant leave file and the documentary evidence of sick sheets is quite clear.

Most concerning is the fact that on the day in which the deceased was hospitalised, he had been issued with a memorandum from the Manager Human Resources demanding that he submit to a Medical Board as per Clause 4. 17.3 of the Collective Agreement.

Despite that fact and the requirements imposed on the employer to notify of the employees death in accordance with S14(2) of the Workmen's Compensation Act, not only did the employer fail to do so for some 14 months, but when it did, it had the audacity to distance itself from the death, implying the cause was independent of work as "this was a weekend".¹

The employer knew that the worker was suffering a severe medical condition but still required him to perform duties as a Vehicle Examiner that included possibly inspecting ten vehicles a day. That is physically crouched or standing in a pit, examining motor vehicles.

I am very concerned about the evidence given by the deceased's wife, who relayed an earlier incident involving a workplace accident in 2006, in which ultimately the deceased worker was required to undergo brain surgery, as a result of a blood clot to the brain.²

According to Ms. Pillay and there is no evidence to the contrary³, the worker was told at the time it was his own fault.

The employer had been put on notice for many years that the worker was extremely unwell, it elected to disregard all these signs and carried on with the worker as if it was 'business as usual'.

The conduct of those charged with the human resource and occupational health and safety task at the time was reprehensible.


To add final insult to injury, it appears that the employer even deducted two days from the worker's final pay provided to his wife, on the basis that he had exceeded his sick leave entitlement.

Against that backdrop, the evidence of two doctors from the CWM Hospital, would not have influenced my decision at all.

Any competent practitioner advising the Authority would have told it to accept the claim made by the Labour Office. I am astounded why they did not.

I order that the employer pay to the Labour Officer within 14 days the amount of \$24,000 as demanded.

In addition I order that the employer pay costs to the Labour Officer of \$3,000, for the unnecessary expenses incurred in this matter.



Mr Andrew J See
Resident Magistrate

¹ The evidence is that the worker collapsed at home on the Thursday night, was taken to hospital, did not attend work on the Friday and passed way on the Saturday.

² Formed following an accident where the worker struck his head while underneath a vehicle.

³ And nor was there going to be, as Ms May had already indicated the scope of the witness evidence that she was going to lead was perhaps two medical doctors and a human resource practitioner to attest what documentary evidence was located on the deceased's personnel leave file.