



**Employment  
Relations Tribunal**

## Decision

<b>Title of Matter:</b>	Labour Officer on behalf of Surendra Prasad v Hari Lal trading as Affordable Investments
<b>Section:</b>	Section 247 <i>Employment Relations Act 2007</i>
<b>Subject:</b>	Failing to pay wages
<b>Matter Number:</b>	ERT Criminal Case No 19 of 2018
<b>Appearances:</b>	Ms V Doge, Labour Office, on behalf of the Worker No appearance for the Defendant
<b>Date of Hearing:</b>	Tuesday 4 December 2018
<b>Before:</b>	Mr Andrew J See, Resident Magistrate
<b>Date of Decision:</b>	13 January 2019

**KEYWORDS:** Demand for Payment of Wages; Watchperson; (Building and Civil and Electrical) Regulations 2012; Dispute in relation to who identity of employer.

### Background

- [1]The Employer has previously appeared before this Tribunal and was fined and convicted for failure to provide Time and Wages Records as demanded by a Labour Officer, pursuant to Section 246(1)(b) of the Act<sup>1</sup>.
- [2]This matter is in effect a logical flow on from that process, where the Labour Officer now seeks to pursue the Employer for the wages claimed by the Worker. Of course, where no time and wages records are provided, means that the case will require the testimony of the relevant parties in order to enable an informed decision to be made.
- [3]When this matter was brought on for mention on 25 September 2018, the Employer Mr Lal, was at that time represented by Counsel. On that occasion, the parties were required to exchange relevant documents that each intended to rely upon, but more importantly canvas the possibility of resolving the matter without the need for adjudication, particularly on the basis that the initial claims by the Employer, that Mr Prasad, was not his employee, appeared to be contradicted by documentary evidence provided in earlier proceedings.

<sup>1</sup> Dare of decision 18 October 2017.

[4]When the matter came on for hearing on 4 December 2018, there was no appearance made by the Employer. To avoid further delay, the Tribunal has relied on its powers contained within Section 233 of the Act, in order to deal with the outstanding wages aspect.

#### The Issues

[5]The Worker Surendra Prasad provided the following evidence during proceedings, that he:-

- (i) Worked as a security guard at the unit development in Nadi, the place where Mr Lal was construction holiday units;
- (ii) Met Mr Lal, when he came to his home with a Mr Jioti and asked him to work at the site;
- (iii) Was engaged for 12 hours a day, seven days per week, arriving at the site at around 5.30pm when the day labourers were completing work and would remain until 6am the following day;
- (iv) Was paid only \$100 per week by the Site Foreman, Mr Chand and was paid by cash, when he would be required to sign a wages book;
- (v) Was informed by workers on the site after several months, that he was to be terminated in his employment, supposedly because timber went missing from the site and he was held to blame by Mr Lal; and
- (vi) Was exonerated in the Small Claims Tribunal, when it was determined that he was not responsible for any such loss by Mr Lal.

[6]In support of the claim for the underpayment of wages, the Labour Officer adduced evidence that included:-

- (i) Various labour contracts entered into by Mr Lal (Ex L1);
- (ii) Bank transaction records of the Foreperson Mr Ravinesh Chand, illustrating deposits of funds into his account for payment to Workers engaged at the site; (Ex L3); and
- (iii) The Labour Complaint as filed with the Labour Office including the calculation of outstanding entitlements owed to the Worker for the periods (Week Ending 1 July 2014 to 9 October 2014)(EX L5);
- (iv) The Smalls Claim Tribunal Complaint Form (Ex L6) in which Mr Lal admits that he had Mr Prasad working for him at the building site and that he "terminated his employment".

[7]The Tribunal has reviewed the claim that has been made as set out within the *Arrears of Wages Calculation Form* and agrees with the method of determining the following outstanding entitlements:-

- (i) Outstanding wages for overtime and ordinary hours based on 84 hours per week, rather than 45 hours per week= \$2,224.63
- (ii) Meal Allowance (7 days @ \$7 per day for 14 weeks)= \$686.00
- (iii) Accrued annual leave = \$57.81

Total Claim = \$2,968.44

[8]The Tribunal agrees that this amount is due and payable and will issue an order accordingly.

[9]On the basis that there are further complaints against Mr Lal in relation to other workers who were engaged at the building site and due to his absence in proceedings, on this occasion, the Tribunal will discharge the Defendant in relation to the Offence of Failing to Comply With a Demand of the Labour Office, but recommend that he confer with those other parties, in a bid to quickly resolving all outstanding matters.

### Costs

[10] Ms Doge for the Labour Office, has sought that costs be awarded for the ongoing work that has been involved in the prosecution of this matter. Counsel claims an amount of \$1,000.00, and in the circumstances of this case and having regard to the fact that the Employer has not been cooperative in his dealings in having these issues resolved expeditiously, such an amount is appropriate and will be awarded.

### Decision

[11] It is the decision of this Tribunal that the Defendant Employer pay the Labour Officer:

- (i) In the case of Mr Surendra Prasad, the sum of \$2,968.44 within 21 days.
- (ii) Costs in the amount of \$1000.00 within 21 days.



Andrew J See  
Resident Magistrate

