



## Employment Relations Tribunal

# Decision

**Title of Matter:** Labour Officer on behalf of Vodowaqa Bulabalavu  
v  
Rajendra Prasad Food town Limited

**Section:** Sections 45 (4) *Employment Relations Act 2007*

**Subject:** Failing to produce time and wages records on demand

**Matter Number:** ERT Criminal Case No 37 of 2018  
**Appearances:** Ms R Kadavu, Labour Office Legal Unit  
Mr K Singh, for the Employer

**Date of Hearing:** Hearing on the papers

**Before:** Mr Andrew J See, Resident Magistrate

**Date of Decision:** 25 November 2019

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**KEYWORDS:** Demand for Time and Wages Records; Section 45(1) *Employment Relations Act 2007*; Regulation 54 *Employment Relations (Administration) Regulations 2008*.

### Background

[1] On 11 October 2019, the Respondent Employer pleaded not guilty to one count of failing to produce on demand, time and wages records contrary to Section 45(1) of the *Employment Relations Act 2007*. The charge follows efforts made by the Labour Officer in pursuing a wages complaint made by Mr Bulabalavu, a former security officer engaged by the Employer. A second charge of failing to pay wages upon demand in writing, contrary to Section 247(b) of the *Employment Relations Act 2007* was withdrawn by the Complainant, after the parties were able to resolve the outstanding wages demand, by way of agreement.

[2] The residual issue, is whether or not the conduct of the Employer is such that it should be convicted of the offence.

### The Service of the Demand Notice

[3] Regulation 54 of the *Employment Relations (Administration) Regulations 2008* provides the options available for service of a Notice for the purposes of the Act. The Labour Office has not provided any evidence as to where the Demand Notice was served. It appears to have been served personally, although within the Complainant's submissions, it is stated that the notice was not served on the registered business address, but rather a branch store. The Employer submits that the

former employee, was not employed at that Lautoka store, but rather was engaged by the Employer at Nakasi. It was stated by the Employer that the notice was inadvertently misplaced at the Lautoka store and that it was not until a demand for wages notice was issued, that the complaint was brought to the attention of the Head Office.

[4] The Labour Office submits that the Employer did not see the need to provide the time and wages records, until such time as the matter had commenced in this Tribunal. The Employer states that it has nine branches throughout the country employing 550 employees and it is noted that it has cooperated with the Labour Office in reconciling the outstanding wage complaint.

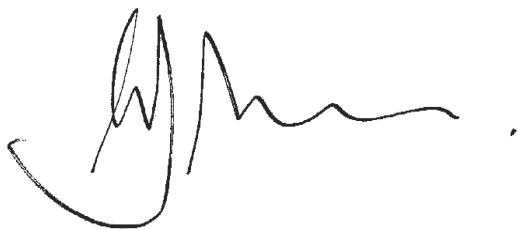
[5] An Employer of this size is entitled to some certainty as to the way in which government agencies and other bodies are going to communicate with it. The very purpose of having a registered business address, is to create certainty in these matters. The Complainant could have, if it wished to do so, served the Demand Notice by post to the Employer's postal address and that would have met the obligations for service. Instead, the Demand Notice appears to have been served on the Manager of a store that had no connection with the employee in question. Whilst some may say, the Manager should have exercised the appropriate level of discretion and referred the Notice to the Head Office, for whatever reason he did not do so. On this occasion, the Tribunal is of the view that the certainty that the Employer is entitled to, imposes a greater obligation on the Labour Office to effectively execute that service, than on the store manager, or his staff to have passed the Demand Notice on. This was not a case where the store manager accepted service, on the basis that the company officials had otherwise refused.

[6] In the circumstances of this case, the Demand Notice was not effectively served and for that reason the Tribunal is going to dismiss the complaint.

## Decision

[7] It is the decision of this Tribunal that:-

The complaint of failing to produce time and wages records on demand, contrary to Section 45(1) of the *Employment Relations Act 2007* is dismissed.



**Andrew J See**  
**Resident Magistrate**