



## Employment Relations Tribunal

# Decision

**Title of Matter:** Labour Officer on behalf of Rajesh Narayan Singh  
v  
Pramila Devi

**Section:** Section 45(1) *Employment Relations Act 2007*  
Section 247(b) *Employment Relations Act 2007*

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

**Matter Number:** ERT Criminal Case No 26 of 2018

**Appearances:** Ms V Raravula, Labour Office Legal Unit  
Mr S Rattan; Mr R Charan, Ravneet Charan Lawyers, for the Employer

**Dates of Hearing:** 4 December 2018, 27 August 2019

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

**Date of Decision:** 16 March 2020

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**KEYWORDS:** Demand for Time and Wages Records; Demand for wages; whether employment relationship between defacto parties.

**CASES CONSIDERED:**

*Balfour v Balfour* (1919) 2 KB 571  
*McBride v Sandland* (1919) 25 CLR 69  
*Turner v Turner* (1918) 25 CLR 569

### Background

[1] The Labour Office has brought a complaint against the Defendant, alleging two offences under the *Employment Relations Act 2007*. The first dealing with a failure to submit to the demand to provide time and wages records, in accordance with Section 45(1) of the Act and the second, for a failure to meet the demand for wages (29 November 2014 to 29 November 2017), made in accordance with Section 247 (b).

[2] On 27 September 2018, the Defendant entered into a plea of not guilty to both counts and on that basis, the matter was set down for trial. What became apparent at the earliest stages, was that a central issue for determination was whether any employment relationship between the parties was in place.

### **The Case of the Labour Office**

[3]Rajesh Narayan Singh is the aggrieved person in these proceedings who gave evidence that he took his complaint to the Labour Office, for the non- payment of wages. According to Mr Singh, he had worked for Ms Devi from 2001 to 2018 and said that he was initially employed as a driver and mechanic and later assisted in the transporting of produce from Naitasiri, to Lautoka. Mr Singh claimed that he had been paid \$50 a week for his services, with an undertaking that the residual of the wages would be paid into a savings account held by Ms Devi and given to him “at the end”.

[4]The Witness told the Tribunal that he had lodged a complaint with the Labour Office on 15 December 2017. During cross examination, Mr Singh conceded that he could not recall the year in which he commenced residing at the family home of Ms Devi and indicated that there were no fixed hours with his work. In his evidence, Mr Singh claimed that whilst residing with Ms Devi and her husband, who is now deceased, that he built a house for the family, as a contribution to the costs of staying with them. Mr Singh admitted to eating his meals with the family and having his cooking and washing undertaken on his behalf.

[5] In cross examination, Mr Singh admitted that he had suggested that Ms Devi commence the buying and selling of produce, but denied having entered into a relationship with Ms Devi during that time. The Tribunal heard that Ms Devi’s husband, who had initially asked Mr Singh to come and live with the family, was during the relevant period infirmed with cancer.

[6]The next witness to give evidence on behalf of the complainant was Ms Prykana Chand, the Investigating Officer from the Labour Office Inspectorate who explained the initial circumstances that gave rise to the complaint being made. In response to the statutory demand, Ms Chand advised the tribunal that Ms Devi had written a letter to the Labour Office clarifying that she had not been in an employment relationship with Mr Singh, but rather that they had been in a de facto relationship. According to Ms Chand it was for that reason in response to a request for time and wages records that Ms Devi advised that she held no such records. Ms Chand explained the methodology behind the wages claim, that was based on a 12 hour day, seven day working week for a Shop Assistant.

### **The case of the Defendant**

[7]When the matter eventually resumed before the Tribunal, Ms Devi was called to give evidence. In her defence, the Witness told the Tribunal that she first met Mr Singh around 2006. Ms Devi stated that Mr Singh:-

- First came to the home in the company of a taxi driver;
- Assisted her husband source a motor engine from Suva;
- Asked her whether he could undertake driving duties to assist her;
- Stayed at the family home at the request of her husband who passed away in 2018;
- Was undertaking his own private mechanical works from within the family compound; and
- Began travelling to Suva with her, to sell mangos, where they would stay at a family friend’s home and ultimately entered into a relationship.

[8] According to Ms Devi, the relationship between the pair ended in October 2017.

[9]The second Witness called on behalf of the Defendant, was her daughter, Ms Pritna Chetty, a market vendor. Ms Chetty told the Tribunal that Mr Singh moved into the family home in or around 2006 and understood initially, that he was there to help with the maintenance of vehicles.

[10]In her evidence, the Witness indicated that Mr Singh was “like a father to me” and that he would stay at the home and have his meals supplied and clothing laundered. According to Ms Chetty, Mr Singh and his mother were in a relationship and that this became known to her after about three years, when “we figured it out”. Ms Chetty told the Tribunal that she was married in 2015 and that Mr Singh performed the role of her father at the wedding.

### **Analysis of Issues**

[11]Despite the Defendant initially wishing to call additional witnesses to give evidence in these proceedings, ultimately through her solicitors, a decision was made not to do so. The threshold issue for determination is whether or not based on the available evidence, was it the case that an employment relationship was in place. Thereafter any question of entitlement can be ascertained. Both parties were given the opportunity to file closing submissions<sup>1</sup>, though unfortunately neither of these addressed specifically the legal question that is at issue.

[12]To make the position clear, the issue for consideration is, was there an intention of the parties to create legal relations, that being an essential contractual element. The general principles set out within *Balfour v Balfour*<sup>2</sup> must govern the analysis. That is, did the two people intend to make a bargain that should be enforced by law? There is no evidence of that whatsoever. The arrangements that were in place that gave rise to the Defendant opening a stall at the Lautoka markets and selling produce obtained from Naitasiri, seem to have emerged out of a domestic setting. There is no evidence of any consideration passing from Mr Singh to Ms Devi, reliant on any agreed terms or offer. There is no evidence of any intention that any promises made by Ms Devi, if there were any made at all, should ever assume the form of a binding contract<sup>3</sup>.

[13]As Barton J said in *Turner v Turner*<sup>4</sup>, The Tribunal cannot shut its eyes to the ordinary facts of life, where domestic arrangements are entered into willingly by parties, without any intention of anything more. The Tribunal accepts the view of the Defendant, that in this case, the relationship between the parties had soured and the aggrieved Mr Singh sought to secure some compensatory benefit, as a consequence of his efforts. Whether or not Mr Singh should have a right to pursue another type of property or family law based claim arising out of a domestic relationship, is not an issue for this Tribunal.

[14]Insofar as the present case is concerned, the starting point for establishing any such entitlement as claimed within a statutory demand for wages, is at the time in which it was said that the parties intended to enter into a binding legal agreement. There is no evidence to support such a case. The Tribunal finds that there was no employment relationship, no requirement for the Defendant to

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<sup>1</sup> See Closing Submissions of the Labour Office filed on 14 February 2020 and the Closing Submissions of the Defendant filed on 9 March 2020.

<sup>2</sup> (1919) 2 KB 571

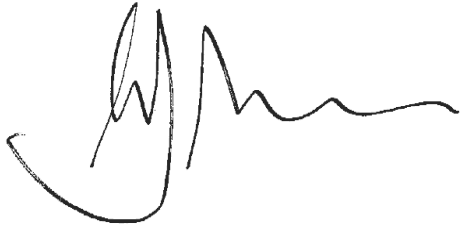
<sup>3</sup> See Isaacs and Rich JJ in *McBride v Sandland* (1919) 25 CLR 69 at 88.

<sup>4</sup> (1918) 25 CLR at 570.

maintain time and wages records and no monies owing under any terminated employment relationship. Both counts must fail for those reasons.

**Decision**

[15] It is the decision of this Tribunal that the complaint against the Defendant be dismissed.



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