



Ex-Parte Decision

Title of Matter: Labour Officer on behalf of Semesa Tuibure (Applicant)
v
Organic Earth (Fiji) Ltd (Respondent)

Section: Section 8 *Workmen's Compensation Act* 1964

Subject: Application to Strike Out Proceedings for being Out of Time

Matter Number: ERT Workmen's Compensation Case No 124 of 2015

Appearances: Ms R Kadavu, Labour Officer
No Appearance by the Employer

Date of Hearing: 7 August 2018

Before: Mr Andrew J See, Resident Magistrate

Date of Decision: 7 August 2018

KEYWORDS: Application to Strike Out Proceedings for being out of time; Notice of Claim for the purposes of Section 13 of the Act; Enlargement of Time.

CASES CITED:

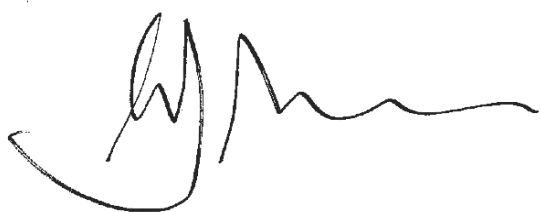
Labour Officer vs Nirmala Holdings trading as Ocean View Hotel [2016] FJET 4; ERT WC 116 of 2016 (2 December 2016)

Richard Beyer v Seth Maharaj FJHC CA No 216 of 2015 (15 February 2016)

Seafresh (Fiji) Ltd v Labour Officer [2016] FJHC 48; ERCA 23/2013

[1] The Respondent Employer has filed an application in proceedings, asking that a preliminary threshold issue be determined. That is whether or not, the claim for the compensation amount, has been made out of time for the purposes of the Act. Despite the Employer being in attendance at proceedings on 3 July 2018, when the matter was scheduled for determination, there is no attendance or representative sent on its behalf today. As the matter can be easily disposed of and there being no reason for the non-attendance of the Employer, the Tribunal has decided to issue this Ex Parte decision.

- [2] The Tribunal finds that the Labour Officer has complied with the requirements set out in Section 13 of the *Workmen's Compensation Act 1964*; by providing Notice of Claim on 23 July 2013 within the 12 month time window required under that provision.
- [3] In reaching this view, the Tribunal has considered its decision in *Labour Officer vs Nirmala Holdings trading as Ocean View Hotel* [2016] FJET 4; ERT WC 116 of 2016 (2 December 2016). Having regard to that decision, the application being pursued by the Labour Officer, is one that is consistent with the requirements of Section 17 of the Act. The initial objections by the Employer that have been raised, cannot be sustained in such circumstances.
- [4] The Tribunal notes the decision provided by the Employer in the case of *Richard Beyer v Seth Maharaj* on 15 February 2016, however believes such decision is not relevant to the specific language and structure of the Worker's Compensation law. There is no enlargement of time being sought by the Applicant. The Tribunal is of the view that the Respondent Employer has misapplied the decision in *Seafresh (Fiji) Ltd v Labour Officer* [2016] FJHC 48; ERCA 23/2013, in circumstances where a Notice of Claim in this case, has been made well within the 12 month time period.
- [5] The Application by the Employer to strike out the claim is therefore dismissed.
- [6] The Labour Officer seeks legal costs incurred in relation to the delay due to the threshold objection being raised and has sought an amount of \$500.00. Such costs appears reasonable and will be awarded. In addition, the Labour Office seeks travelling and related expenses for costs incurred by the injured worker, in attending today's proceedings. The Tribunal believes that an amount of \$20.00 should be paid to the Worker in this regard.
- [7] Separate Orders to give effect to this decision will be issued to the parties.



Mr Andrew J See
Resident Magistrate