

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



## Decision

**Title of Matter:** LABOUR OFFICER on behalf of the Dependents of the Deceased, Nacanieli Yalimaitoga (Applicant)  
v  
FIJI MEAT INDUSTRY BOARD (Respondent)

**Section:** Section 6 *Workmen's Compensation Act 1964*

**Subject:** Compensation for death arising out of accident

**Matter Number(s):** ERT WC 107 of 2016

**Appearances:** Ms L Mataigusu, for the Labour Officer as Applicant on behalf of the dependants of Mr Nacanieli Yalimaitoga, on behalf of the Respondent

**Date of Hearing:** 9 January 2017

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

**Date of Decision:** 12 February 2018

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**KEYWORDS: Section 5 *Workmen's Compensation Act 1964*; Claim for Compensation; Death arising out of accident; Recovery of Compensation for Injury; Arising out of course of employment. Meaning of "Injury by accident".**

**CASES CITED:**

*Fiji Sugar Corporation Ltd v Labour Officer* [1995] FJHC39; Civil Appeal No 0010 of 1994, 17 February 1995.  
*Labour Officer v Post Fiji Ltd* [2017] FJET 3; ERT WC97.2016 (13 February 2017)  
*Raiwaqa Buses Ltd v Labour Officer* [2011]FJHC174; HBA23.2008 (18 March 2011)  
*The Labour Officer v Wood& Jepsen Surveyors and Engineers* [2013] FJET 4;  
*Travelodge Fiji Limited Suva v The Labour Officer for Karalaini Diratu* [1994] FJHC 180; (9 December 1994)

**Background**

1. This is an application made for worker's compensation in accordance with Sections 5 of the *Workmen's Compensation Act 1964*. The Applicant Labour Officer stated that the deceased Worker was employed as the Chief Executive Officer. The deceased passed away whilst on annual leave. In accordance with the medical opinion provided by the Medical Assessor for the Labour Officer, the cause of the worker's death, was as a result of cardio-pulmonary arrest, with

an underlying cause being attributed to the fact that the deceased was an uncontrolled hypertensive. Within the medical opinion provided by Dr Tikoinayau on 25 August 2011, it is claimed that the pathophysiology of work stress, giving rise to uncontrolled hypertension, leading to congestive cardiac failure and cardio respiratory arrest, supports the finding that the death was work related.<sup>1</sup>

2. In the Submissions of the Employer filed on 11 October 2016, it is stated, that the deceased worker had only commenced work with the Respondent on 1 July 2009, some 18 months prior to his death. The Employer contended that “there was no accident at work that caused the death of (the worker), but rather he died from natural causes while on leave’.

### **The Case of the Labour Officer**

3. The first witness to give evidence on behalf of the deceased worker, was the departmental investigating officer, Ms Lata. The witness gave the Tribunal a brief summary of the issues that she considered when assessing whether or not the deceased had suffered from a work related accident and this included a review of his job description,<sup>2</sup> the Medical Report provided by Dr Tikoinayau and various information obtained from other employees of the Employer.<sup>3</sup> Ms Lata told the Tribunal that the deceased worker had commenced annual leave with the Employer on 24 December 2010 and passed away on 29 December 2010.
4. The second witness to give evidence was Dr Raoni Tikoinayau. Dr Tikoinayau, is a medical expert in the field of occupational medicine. The witness gave evidence as to the relevant factors that he considered when providing his opinion to the Labour Officer as to whether or not the deceased’s demise was work related. This included:-
  - (i) The death certificate;
  - (ii) Medical Report ;
  - (iii) Position Description; and
  - (iv) Other information that was supplied surrounding the circumstances of death<sup>4</sup>.
5. Dr Tikoinayau told the Tribunal that there had been no post mortem undertaken on the deceased at the time of death and noted that the worker had suffered a mild stroke some time before August 2010. Under cross examination, Dr Tikoinayau gave evidence that he understood that the former Chief Executive Officer had been involved in stressful loan and funding negotiations within his role and believed that ongoing stress suffered by the deceased at work, gave rise to his demise.
6. The final witness to give evidence on behalf of the Labour Office, was Mr Afroz Ali, who was the Human Resource/Payroll and Transport Officer for the Fiji Meat Industry Board. Mr Ali confirmed that the deceased had just commenced a period of annual leave, prior to his demise and gave a brief history of the major issues that were impacting upon the operations of the Board and the work of its former Chief Executive Officer. This work included, dealing with the

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<sup>1</sup> Note the amendment made to Exhibit L3, due to an error in the template document used to create the report.

<sup>2</sup> See Exhibit L2. (Applicant’s Disclosures)

<sup>3</sup> See Documents B1(Exhibit L3) and B2 (Exhibit L4).

<sup>4</sup> See Exhibit L6 that was prepared by the Labour Office for this purpose.

onset of the brucellosis outbreak among cattle in 2009, negotiations to secure funding for the Fiji Tannery and budgetary issues arising out of slaughter fees as set through the Ministry of Agriculture.

7. The Employer has elected not to call any evidence and instead has made reference to the decision of the Court of Appeal in *Raj Wati v Emperor Gold Mining Company Limited*<sup>5</sup> as being a useful guide for how matters of this type should be considered. Whilst the Tribunal recognises the clarity of that decision in relation to the statutory analysis, it nonetheless believes that in the present case, the circumstances are distinguishable, insofar as the Labour Officer has both been able to produce direct evidence from its medical expert and also that of a worker who could describe first hand, the nature of some of the activities that the Chief Executive Officer was engaged in prior to his demise.

### **Was the Deceased a Workman for the Purposes of the Act?**

8. Section 2 of the *Workmen's Compensation Act 1964* defines workman to mean:

*any person who has, either before or after the commencement of this Act, entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, or otherwise, whether the contract is expressed or implied, is oral or in writing, whether the remuneration is calculated by time or by work done, and whether by the day, week, month or any longer period:*

*Provided that the following persons are excepted from the definition of "workman":-*

- (a) a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, not being a person employed for the purposes of any game or recreation and engaged or paid through a club;*
- (b) an outworker;*
- (c) a member of the employer's family dwelling in the employer's house or the curtilage thereof; or*
- (d) any class of persons whom the Minister may, by order, declare not to be workmen for the purposes of this Act.*

9. The Tribunal is satisfied that the deceased was a workman for the purposes of Section 2.

### **Was the Respondent the Employer of a Deceased Workmen?**

10. Section 3 of the Act, reads:

*"employer" includes the Government and any body of persons corporate or unincorporate and the personal representative of a deceased employer, and, where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the workman whilst he is working for that other person; and in relation to a person employed for the purposes of any game or recreation and engaged or paid through a club, the manager, or members of the*

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<sup>5</sup> Civil Appeal No ABU 0016 of 2006S (High Court Civil Action No. HBC0054 of 1998L)

*managing committee of the club shall, for the purposes of this Act, be deemed to be the employer;*

11. There is no doubt that the Employer was captured by the definition at Section 3 of the Act.

**Did the Worker Suffer a Personal Injury by Accident For the Purposes of the Act?**

12. Section 5(1) of the *Workmen's Compensation Act 1964* provides as follows:

*If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workmen, his employer shall, subject as hereinafter provided be liable to pay compensation in accordance with the provisions of this Act ....*

13. It appears well accepted that there are three requirements to satisfy Section 5(1) of the *Workmen's Compensation Act 1964*.<sup>6</sup> These are:-

- (i) Personal injury by accident;
- (ii) Arising out of employment;
- (iii) In the course of employment.

**Did the Worker Suffer A Personal Injury By Accident?**

14. Pathik J in *The Fiji Sugar Corporation Limited v Labour Officer*<sup>7</sup> set out in detail what was to be meant by the expression "injury by accident". Citing the 32<sup>nd</sup> Edition of Willis' *The Workmens Compensation Acts 1925 to 1938*, his Honour referred to the passage within that text, where the definition of accident was considered at page 8 and it is stated:

*The word 'accident' does not necessarily involve the idea of something fortuitous and unexpected as formerly held. ..it includes injury caused by overexertion in the ordinary course of employment...*

15. His Honour further referred to the case of *Fife Coal Co Ltd v Young*<sup>8</sup> where it was held by Lord Aitkin, that

*It is necessary to emphasize the distinction between "accident" and "injury", which in some cases tend to be confused... it is now established, however, that apart from external accident, there may be what no doubt others as well as myself have called internal accident (underline mine for emphasis).... A man suffers from rupture, an aneurism bursts, the muscular action of the heart fails while the man is doing his ordinary work, turning a wheel screw, or lifting his head. In such cases, it is hardly possible to distinguish in time between accident and injury. The rupture which is accident is at the same time injury, from which follows at once, or after a lapse of time, death or incapacity.*

16. Finally, Pathik J within his decision, referred to the case of *Fiji Industries Limited v Ateca Dretirewa*,<sup>9</sup> where Ashton-Lewis J stated:

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<sup>6</sup> *Raiwaqa Buses Ltd v Labour Officer* [2011]FJHC174; HBA23.2008 (18 March 2011)  
<sup>7</sup> [1995] FJHC 39; Hba0010j.94b (17 February 1995)  
<sup>8</sup> (1942) AER HL 85 at 91  
<sup>9</sup> (Civil Appeal 15/92)

*Thus it would appear that the law has developed to the point where there is now no requirement that the event causing the injury is unexpected or not designed, it being sufficient that the injury itself (ie the heart attack) is unexpected or not designed by the worker.*

17. The deceased worker suffered from cardiac arrest, brought about by congestive cardiac failure. The medical opinion of the Medical Assessor was that the cardiac failure was brought about through hypertension, due to workplace stress. There is no conflicting medical evidence in this regard and for that reason, subject to the qualifications given further within this decision, the medical opinion of the Medical Assessor is accepted.

#### **Was the Worker's Death by Accident Arising Out of Employment?**

18. Pathik J in *Travelodge Fiji Limited Suva v The Labour Officer for Karalaini Diratu*<sup>10</sup>, sets out the relevant considerations when determining whether or not a worker suffered an accident arising out of employment. His Honour relied on Lord Sumner's characterisation in *L & YR v Highley*<sup>11</sup> to apply the following test:

*".... Was it part of the injured person's employment to hazard, to suffer, or to do that which caused his injury? If yea, the accident arose out of his employment. If nay, it did not, because what it was not part of the employment to hazard, to suffer, or to do cannot well be the cause of an accident arising out of the employment. To ask if the cause of the accident was within the sphere of the employment, or was one of the ordinary risks of the employment, or reasonably incidental to the employment, or, conversely, was an added peril and outside the sphere of the employment, are all different ways of asking whether it was a part of his employment that the workman should have acted as he was acting, or should have been in the position in which he was whereby in the course of that employment he sustained injury.*

19. As his Honour further stated:

*The expression is not confined to the mere "nature of the employment" as formerly held in several cases, but it "applies to the employment as such - to its nature, its conditions, its obligations, and its incidents. If by reason of any of these the workman is brought within the zone of special danger and so injured or killed, it appears to me that the broad words of the statute 'arising out of the employment apply."*

20. In relation to the second limb, Dr Tikoinayau told the Tribunal that the likely contributor to the demise of the worker, was due to the stressful workplace environment in which he worked. In this regard, the evidence of Mr Ali in relation to the financial negotiations that were being undertaken by the deceased, were relevant stressors within the opinion formulated by the Medical Assessor. The Tribunal is nonetheless somewhat concerned in relation to the quality of the evidence to support the establishment of this second limb. In *Labour Officer v Post Fiji*

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<sup>10</sup> [1994] FJHC 180

<sup>11</sup> (1917) AC 352 at 372

Ltd,<sup>12</sup> this Tribunal considered the case of a postal worker who had passed away some time after retiring from work on ill health and said:

*It is this area that the Tribunal has some difficulty in accepting that the event as being one arising out of the Worker's employment. The Worker had been absent from work for a period of approximately two months prior to the stroke occurring. Even if it was the case that at least on one occasion, the evidence of the Applicant was that the Employer had not followed proper and responsible protocols in allowing the worker to leave work when he was genuinely unwell, that single event in my view cannot be so connected to the stroke some three months later, that it would fall within this second pre-requisite required under the Act. The Employer had sought to place the Worker on light duties and to restrict the work that he was physically required to undertake. Such a situation is at odds with that found in the case of Labour Officer v Wood & Jepsen Surveyors and Engineers<sup>13</sup> where no such modifications of duties had taken place. The worker was not at work at the time, when he suffered the RT cerebral infarct with LT hemiplegia. It is noted that the Final Medical Assessment prepared by Dr Tikoinayau dated 23 October 2011, suggests that he was. That is simply incorrect. Yes the Worker was identified as a person requiring the attention of the Employer in terms of the health management obligations of its employees. Though it appears, save for the event where the Worker appears to have remained at work when he may have been too unwell to work, that this issue was being monitored. An Employer can be placed in an unenviable position. At one level, it needs to ensure the health and safety of its employees and to make sure that all workers are physically fit to meet the demands of the job. At the other level, should a company not seek to adjust and modify duties, but to simply claim that the Worker should be terminated due to an inability to fulfil such physical demands, could render such conduct discriminatory for the purposes of Section 75 of the Promulgation. I am of the belief that while on an extended period of leave from work, it is difficult to say that the accident occurred during the employment of the Worker. Yes, he was still an employee, but given he had been on leave for a considerable period of time, creates some difficulty in accepting that nexus. The event took place at the Worker's home. There is no evidence of what transpired at his home for the considerable period that he was off work. The second limb has not been established.*

21. In the present case, it is accepted that the deceased worker had only been absent from work for several days. It is also the case that Mr Yalimaitoga had earlier suffered from a mild stroke in 2010, although the Labour Officer did not adduce any relevant evidence pertaining to that issue, or whether or not such an event was known to the Employer. The Tribunal therefore accepts that whilst a nexus has been established, that based on the evidence before it, it is nonetheless not a particularly strong one. A stronger case would have relied on, for example, the earlier medical records of the deceased and the documented impact that work had in relation to his health history and management.

### **In the Course of Employment**

22. In *Travelodge*, Pathik J stated:

*The two conditions which must be fulfilled before an accident can be said to have occurred "in the course of employment" are:*

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<sup>12</sup> [2017] FJET 3; ERT WC97.2016 (13 February 2017)

<sup>13</sup> [2013] FJET 40; Workmen's Compensation Case 77 of 2010 (11 November 2013).

*(a) the accident must have occurred during the employment of the workman and  
(b) it must have occurred while he was doing something which "his employer could and did, expressly or by implication, employ him to do or order him to do"*

23. Within the limitations expressed above, the Tribunal is satisfied that the hypertension (workplace stress) was brought about during the employment of the deceased and that it occurred while he was undertaking work that his employer required him to do.

### **Conclusions**

24. Overall, while the Tribunal is of the view that there has been a nexus established through the evidence of Dr Tikoinayau and that of Mr Ali, it is not of the view that the case is so strong as to justify the maximum statutory compensation that is available under the Act. In assessing the appropriate compensation payment, the proviso at Section 5(1) of the Act states:

*... that where the injury results in death or serious and permanent incapacity, the court on consideration of all the circumstances may award the compensation provided for by this Act or such part thereof as it shall think fit.*

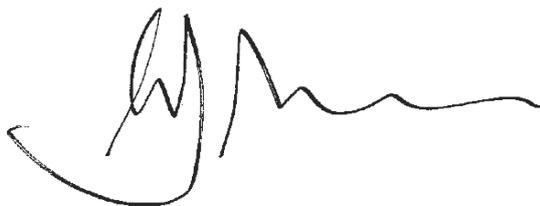
25. Based on the circumstances of this case, the maximum amount payable at the time of death, in accordance with Section 6(a) of the Act, was \$24,000.00. The Tribunal believes that it is appropriate to discount that amount by 40 percent, based on the strength of the evidence that supports the establishment of causation.

26. On that basis, a compensation amount of \$14,400.00, should be awarded.

### **Decision**

It is the decision of this Tribunal that:

- (i) The Respondent Fiji Meat Industry Board is ordered to pay compensation to the Labour Officer on behalf of the dependants of Nacanieli Yalimaitoga in the amount of \$14,400.00.
- (ii) The compensation amount is to be paid within 28 days hereof.
- (iii) Each party should bear their own costs.



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