



Ex-Tempore Decision

Title of Matter: Labour Officer (Applicant)
V
Fiji National University (Respondent)

Section: Section 236 *Employment Relations Act 2007*

Subject: Request for Adjournment at Day of Trial: Costs Thrown Away

Matter Number: ERT Workmen's Compensation Case No 40 of 2016

Appearances: Ms M. Faktaufon of the Attorney General's Chambers for the Labour Office
Mr P. Chauhan of Messrs Gordon Law for the Employer

Date of Hearing: 14 March 2018

Before: Mr Andrew J See, Resident Magistrate

Date of Decision: 14 March 2018

Background

The Respondent Employer has requested an adjournment of these proceedings on the day of trial. The Applicant on behalf of the injured worker was ready to proceed in this matter and had brought to the Tribunal court, its witnesses ready to give evidence. According to Mr Chauhan, the reason for the request for an adjournment, is to allow the Respondent Employer the opportunity to have the Worker submit to a further medical examination.

Issues

The Tribunal has considered the respective positions of the parties in relation to what would be an appropriate quantum of costs to be awarded and is of the view that insofar as witness expenses are concerned that the medical expenses of the Dr. Simione Vaceduadua should be recognised in the amount of \$1000.00. Costs should be paid to the Grievor in the amount of \$150.00. The Grievor is working, could have been working, although admitted that he had not been called up for duty. That is not to say that he would not have been called up for duty on today's date and still could be called up for duty or may have been called up for duty during the course of the last hour and half.

In relation to the legal expenses of the Attorney General's chambers, an amount of \$750.00 is seen as appropriate in the circumstances. That gives rise to a total cost amount of \$1900.00. I order that amount to be paid within 14 days hereof.

In relation to the scheduling of this matter, the Tribunal is now quite concerned that the matter has gone on for a lengthy period of time. The Tribunal is mindful of the issues raised by Ms. Faktaufon in relation to the lack of earlier interest demonstrated by the Employer in facilitating any alternative medical examination being undertaken. It is recognised that some attempt had been made, though as Ms. Faktaufon indicated, an earlier cheque provided to the Worker to attend a medical appointment was not honoured by the issuing bank and on that basis the Worker was not able to attend on that particular occasion.

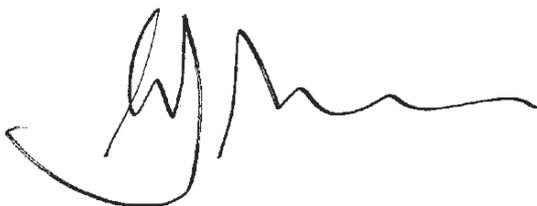
There is no evidence of any other attempts being made to secure a further medical examination from the Worker by his former Employer, after that point. Mr. Chauhan had indicated that by next week an appointment will have been made and the Worker will be assisted in attending in Suva for that appointment no later than Friday, the 23rd of March. The Employer is responsible for the private transport for the Worker to attend that medical examination, including the provision of reasonable out of pocket expenses to cover any meals and possible accommodation, in the event that the appointment is scheduled later than 3 pm on any of the afternoons of that week.

Upon finalization of the medical examination, the specialist will be required to submit his medical report and that report will need to be made available to the Applicant by no later than close of business 7th of May, 2018.

The medical specialist for the Employer shall also be required to be accessible by telephone for the giving of evidence on the 9th of May, 2018. The precise time for that taking of the evidence shall be a matter that is required to be coordinated between the respective Counsels.

Decision

- (i) The Respondent must pay to the Labour Office within 14 days, the amount of \$1,900.00, being costs thrown away in the proceedings.



Mr Andrew J See
Resident Magistrate