

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURAU ROHE**

[2024] NZERA 265  
3188499

BETWEEN

MUHEET AHMED  
Applicant

AND

KALIKA ENTERPRISES  
LIMITED  
Respondent

Member of Authority: Andrew Gane

Representatives: Applicant in person  
No appearance for the Respondent

Investigation Meeting: 31 January 2024

Submissions and further information received: 23 April 2024 from the Applicant

Determination: 6 May 2024

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Muheet Ahmed was employed by Kalika Enterprises Limited (KEL) on 11 November 2019. Mr Ahmed's employment with KEL terminated on 6 June 2020. Mr Ahmed raised claims against KEL for failure to correctly pay his wages and holiday pay. As a result of KEL's alleged failures Mr Ahmed has sought arrears and interest on those claims from KEL.

[2] There has been no engagement by KEL with the Authority's investigation of the employment relationship problem. Mr Ahmed's claims against KEL have gone unchallenged.

### **The Authority's investigation**

[3] For the Authority's investigation a written witness statement and supporting documents were lodged from Mr Ahmed. During my investigation I heard evidence from Mr Ahmed who answered questions under affirmation from me. KEL was not represented and submitted no evidence during these proceedings. I am satisfied that a copy of the notice of investigation meeting and witness statement were served by a process server on the registered office of the company on 2 November 2023.

[4] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

### **The issues**

[5] The issues requiring investigation and determination are:

- (a) Was Mr Ahmed owed any wage arrears at the end of his employment;
- (b) Was Mr Ahmed owed any holiday pay at the end of his employment;
- (c) Should KEL be ordered to pay any outstanding arrears to Mr Ahmed;
- (d) Should KEL be ordered to pay interest on such arrears; and
- (e) Should either party contribute to the costs of representation of the other party.

### **Relevant law**

[6] Under s 132 of the Act and s 83 of the Holidays Act 2003 (HA) where:

- (a) claims are brought before the Authority for arrears under s 131 of the Act or holidays entitlements under the HA; and
- (b) an employer has failed to keep or produce wage and time records under the Act or a holiday and leave record; and
- (c) the employer's failure prejudices an employee's ability to bring an accurate claim;

then the Authority may accept as proved, in the absence of evidence to the contrary, an employee's claims about wages paid, hours, days and time worked, and payments made under the HA and leave taken.

## **Background**

[7] Mr Ahmed was employed as a chef by KEL, trading as the Coffee Club (the cafe), in Auckland. Mr Ahmed said the cafe was open seven days a week and he would usually work from Wednesday to Sunday. Mr Tejus Patel was in charge of the cafe and his wife managed the cafe.

[8] Mr Ahmed signed an individual employment agreement (IEA) with KEL on 11 November 2019 and he commenced working at the cafe on the same day. The IEA set out his hours of work as a minimum of 35 hours a week at a rate of pay of \$18.50 per hour. Mr Ahmed said that although his IEA stated his hours of work were 35 hours a week, he regularly worked up to 50 hours a week.

## **Wage Arrears**

[9] In Mr Ahmed's statement of problem, he claims wage arrears for the period he worked between 11 November 2019 to 6 June 2020. Mr Ahmed worked intermittently between 22 March and 6 June 2020.

[10] Mr Ahmed stated that he had made repeated requests for wage and time records but KEL had failed to provide him with any. This lack of documentation made it difficult for him to assess whether he was properly paid for the hours he worked.

[11] Mr Ahmed said he was under paid for the hours he worked on a weekly basis. He lodged with the Authority copies of documentation setting the hours he worked, what he was paid, and what he should have been paid between 11 November 2019 and 6 June 2020. These are corroborated by bank statements.

[12] I have relied on Mr Ahmed's evidence which supports the amounts he says are owing. In summary Mr Ahmed was underpaid \$823 (gross) for the hours he worked between 11 November 2019 and 6 June 2020.

[13] Based on the calculation I accept Mr Ahmed is owed \$823 (gross). KEL is to pay Mr Ahmed \$823 (gross) in wage arrears.

## **Holidays**

### *Public holidays*

[14] Mr Ahmed stated he worked on 26 December 2019, 6 February and 6 June 2020, but was not paid time and a half on those dates or given an alternative holiday. Under the IEA Mr Ahmed's daily pay was \$129.50. Mr Ahmed is therefore owed \$582.75 (gross).

[15] Mr Ahmed said he did not work on 25 December 2019, 1 and 2 January 2020, 27 January 2020 (anniversary day) and 10 and 25 April 2020 and was not paid for the public holidays. He is entitled to six days being \$777.00 (gross).<sup>1</sup>

[16] KEL must pay \$1,359.75 (gross) to Mr Ahmed for unpaid public holidays under the HA.

### *Annual Holidays*

[17] Mr Ahmed claimed he was not paid annual holidays. Between 11 November 2019 to 6 June 2020, he earned a total of \$13,205.00 (gross). As determined, he should also have received \$1,359.75 (gross) in unpaid public holiday pay. In total he earned \$14564.75 (gross).

[18] Under the HA, Mr Ahmed is entitled to be paid 8% of his gross income at the end of his employment. KEL must pay Mr Ahmed annual holiday pay of 8% on \$14,564.75. KEL is to pay Mr Ahmed is \$1165.18 (gross) in holiday pay.<sup>2</sup>

## **Interest**

[19] Mr Ahmed has asked that the I calculate the interest for him. He can recover interest on his contractual entitlements as set out in paragraphs [13], [16] and [18] above, from 6 June 2020, until 30 April 2024 (the date of determination). If the amounts ordered are not paid by KEL, interest will continue to accrue. The order for payment of interest is made under clause 11(1) of Schedule 2 of the Employment Relations Act 2000. Interest is to be calculated by using the Civil Debt Interest Calculator.<sup>3</sup>

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<sup>1</sup> Holidays Act 2003, s 49

<sup>2</sup> Holidays Act, s 23

<sup>3</sup> <http://www.justice.govt.nz/fines/civil-debt-interest-calculator>.

[20] The interest calculated on the amounts set out in paragraphs [13], [16] and [18] above is \$444.20.

### **Orders**

[21] Mr Ahmed's claims for wage arrears and holiday pay have been upheld. Within 28 days of this determination KEL is ordered to pay Mr Ahmed the following sums:

- (a) Wage arrears of \$823.00 (gross)
- (b) Public holidays \$1,359.75 (gross)
- (c) Annual holiday pay of \$1165.18 (gross)
- (d) Interest as awarded in paragraph [20] above of \$444.20.

### **Costs**

[22] Mr Ahmed was unrepresented and therefore has no claim for costs. However, KEL is ordered to pay Mr Ahmed the filing fee of \$71.56 within 28 days.

Andrew Gane  
Member of the Employment Relations Authority