

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 500
3233039

BETWEEN

LONG AN
Applicant

AND

HAELTHTECH NEW
ZEALAND LIMITED
Respondent

Member of Authority: Sarah Blick

Representatives: Helen McDermott, counsel for the applicant
Simon Spratt, for the Respondent

Investigation Meeting: On the papers

Determination: 05 September 2023

DETERMINATION OF THE AUTHORITY

What is the employment relationship problem?

[1] The applicant Long An (known as Alan An) and the respondent Haelthtech New Zealand Limited (HNZL) entered into a written employment agreement in March 2020. Mr An was employed as a Software Developer until his last day on 29 January 2021. Mr An says his salary was not paid correctly, resulting in underpayments totalling \$30,578.30, including holiday pay due on termination of his employment.

[2] Although HNZL did not respond to Mr An's application, its director Simon Spratt has engaged in email correspondence with the Authority, advising the company does not dispute the amount Mr An claims is owing.

What has the Authority's process been?

[3] The Authority was satisfied the statement of problem was served at HNZL's registered office as shown on the Companies Register. HNZL did not lodge a statement in reply.

[4] The Authority emailed the parties inviting them to a case management conference, which HNZL did not respond to until the morning of the conference on 8 August 2023. By email Mr Spratt advised he was not available to attend the teleconference. Mr Spratt further advised HNZL did not dispute Mr An's claim for arrears, it would willingly enter into an arrangement to settle the dispute and that HNZL has no income and was working on re-capitalising the company.

[5] The Authority acknowledged the response but advised it would attempt to call HNZL at the time set for the conference, and warned it would proceed in HNZL's absence if it could not be contacted. HNZL did not answer the Authority's call and the conference proceeded in its absence. Mr An was agreeable to the Authority's investigation being determined "on the papers" without the need for an investigation meeting.

[6] Written directions were issued on 9 August 2023 timetabling the lodgement of further information from Mr An, breaking down the arrears and interest sought, and about his legal costs. HNZL was given a final opportunity to respond to the application in the form of lodging an application for leave to respond with reasons for the delay in responding, together with an intended statement in reply and any financial information it wished to be considered, by 29 August 2023. The written directions were served at HNZL's register office address and sent to Mr Spratt by email. The Authority, having received no information from HNZL in compliance with its timetabling directions, advised it would now proceed to determine the application on the papers.

[7] On the morning of 31 August 2023, Mr Spratt advised HNZL "is in the middle of a potential liquidation by the IRD" and that he was meeting with Inland Revenue that day. On the same date counsel for Mr An advised she understood there are current proceedings in the High Court. HNZL has not updated the Authority since its correspondence on 31 August 2023, and no liquidators have been appointed. The Authority now determines the application on the papers.

[8] As permitted by s 174E of the Employment Relations Act 2000 (the Act), this determination does not record all the evidence and submissions received and considered during the Authority's investigation but has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter, and specified orders made as a result.

What are the issues?

[9] The following are the issues for investigation and determination:

- (a) Does HNZN owe Mr An \$30,578.30 in arrears of wages and holiday pay?
- (b) Should interest be awarded on arrears owing and if so for which periods should it be calculated?
- (c) Should costs of representation be awarded in relation to the application?

Does HNZN owe Mr An \$30,578.30 in arrears of wages and holiday pay?

[10] Having considered the information lodged and HNZN's response, I am satisfied Mr An was underpaid his salary between May 2020 and January 2021, resulting in unpaid arrears of wages of \$26,486.55 (gross). This constituted a breach or breaches of s 4 of the Wages Protection Act 1983.

[11] The Authority is also satisfied Mr An was not paid annual holiday pay on termination of his employment, resulting in arrears of holiday pay of \$4,091.75 (gross). He was entitled to be paid 8 percent of his gross earnings since the commencement of his employment. This constituted a breach of ss 23 to 27 of the Holidays Act 2003.

[12] I am satisfied HNZN failed to pay Mr An a total of \$30,578.30 (gross) in arrears of wages and annual holiday, and an order for payment of the full amount should be made.

Should interest be awarded on arrears owing and if so for which periods should it be calculated?

[13] The Authority has the power to award interest under clause 11 of the Second Schedule of the Act. Interest is to reimburse someone for the loss of use of monies to which there is an established entitlement. Mr An made numerous informal attempts over a long period of time to recover the outstanding amounts from HNZN directly. All of them proved unsuccessful and resulted in delay. It is appropriate for a person such as Mr An, who has been deprived of the use of his money, to make an award for interest.

[14] HNZL is ordered to pay interest using the civil debt interest calculator.¹ Interest on the gross amount of \$30,578.30 is to be calculated from 29 January 2021 (being the last day of Mr An's employment) until full payment is made.

Outcome

[15] Haelthtech New Zealand Limited is ordered to pay to Long An (known as Alan An) the following within 21 days of the date of this determination:

- a. \$26,486.55 (gross) as arrears of wages;
- b. \$4,091.75 (gross) as arrears of annual holiday pay;
- c. Interest on these amounts as calculated at [14] above.

Costs

[16] Mr An ultimately engaged present counsel who made representations to HNZL and assisted with his application to the Authority after the amounts remained unpaid. Mr An has provided confirmation of legal fees incurred by him which amount to \$3771.00 and he seeks an award of his full legal costs.

[17] Mr An, as the successful party, is entitled to a contribution towards his legal costs. Costs will be assessed in accordance with the Authority's usual notional daily tariff-based approach to costs. Because this matter was dealt with on the papers, it will be treated on a pro-rata basis as a half-day investigation meeting. Accordingly, the starting point for assessing costs is \$2,250.

[18] Although I am not satisfied an award of full costs is warranted, an uplift to the notional daily tariff is. Haelthtech is ordered to pay Long An a total of \$2,500 towards his legal costs within 21 days of the date of this determination.

¹ See <https://www.justice.govt.nz/fines/civil-debt-interest-calculator/>.

[19] Haelthtech must also reimburse Mr An the Authority application fee of \$71.55 that he paid to lodge his application, within 21 days of the date of this determination.

Sarah Blick
Member of the Employment Relations Authority