

that day and calls made to his contact phone. I spoke briefly with Mr Doyle, a co director of Aotea and then issued Directions² saying that I would consider this matter ‘on the papers’ subject to the lodging of affidavits and documentation. I am satisfied Mr Leighton was provided with these Directions through his contact details. I indicated in the above referred Directions that Mr Leighton was strongly urged to participate in my investigation process and if he did not he risked a determination being made without his input. I further noted that once I received and reviewed the further documentation received from the parties, if there were questions I needed to then ask, I reserved my decision to convene an investigation meeting.

[3] Mr Doyle for Aotea lodged an affirmed affidavit and documentation within the directed timeframe. I am satisfied this was provided to Mr Leighton who has not responded with a reply within the directed timeframe. I considered then that I had no questions to ask the parties based on the uncontested material in front of me and reserved my determination ‘on the papers’.

[4] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings and expressed conclusions as necessary to dispose of the matter and make appropriate orders.

Further background and findings

[5] Based on the uncontested evidence of a copy of a signed individual employment agreement (first IEA) Mr Leighton commenced his employment with a company called Phone Link South 2019 Limited (Phone Link) on 11 May 2023, signing the IEA on 26 April 2023 as an electrician.

[6] The first IEA contained clauses that set out that the employee agreed that the employer could make ‘reasonable deductions and or upon termination, to your remuneration, including any final pay or holiday pay following consultation with you.’ The first IEA included that ‘you and we specifically agree we may make deductions each pay period or upon termination, to your remuneration, including any final pay or

² Directions of the Authority dated 31 January 2025.

holiday pay, without consulting you, for any ... 'money or debt you owed to us ...'. There is further reference that 'deductions' are 'outlined in the [IEA] or in any policy.'

[7] Schedule 1 of the second IEA contains the following section:

Tools Rules:

You must provide at your own expense, and have ready for use at work, the tools required to perform the duties of your position (**tools**). We will provide additional tools or equipment as may be reasonably required from time to time to complete specific tasks.

Where we require you to provide your own tools, we will advise you what our policy is as to whether we will insure your tools or whether you must take steps to do so yourself appropriately.

You shall be responsible for providing and maintain a certified list of your tools. This list will be subject to verification by us.

Where we have a policy allowing you to purchase tools or supplies at our wholesale supplier, you must fully reimburse us by the end of the month in which the tools are purchased. If you fail to do so then you agree we may deduct the balance of monies owing directly from your remuneration in the next pay period(s) or in your final pay.

[8] Mr Leighton is also recorded as having the Aotea Staff Handbook to take home on 11 May 2023 which I note was just over six weeks before he signed the second IEA. The handbook provided to me was printed off as a template on 25 February 2025 and contains the following:

Tool Accounts

Each staff member at Aotea has a staff account where you can use the companies' supplier accounts to purchase product for yourself. Your Tool Account number is [], where the [] is your individual staff number (as shown on your payslip).

[9] On 28 September 2023 Mr Leighton signed an individual employment agreement with Aotea (second IEA). The Second IEA recorded Mr Leighton commencing his employment as an electrician on 3 October 2023 with that entity. The first and second employment agreements are identical as to terms including the same terms and schedule referred to above regarding deductions and tools.

[10] I accept the uncontested affidavit evidence before me from Mr Doyle which is consistent with documentation that on 3 October 2023 the business run by Phone Link South 2019 Limited (Phone Link) and all accounting including Mr Leighton's tool account was transferred to Aotea.³ Both IEA's have title pages that the respective companies are part of the 'Aotea Group' and both list identical numerous entities that form part of that group in the respective IEA schedules. According to New Zealand Companies Office Register Mr Doyle is sole director of Phone Link South 2019 Limited and the sole shareholder is Aotea of which Mr Doyle is one of four directors and is a minority shareholder.⁴ I further accept based on the uncontested documentation before me that Mr Leighton's employment likely continued with Aotea from 3 October 2023 and his ongoing 'tool account' transferred across to Aotea.

[11] I accept that based on the uncontested documentation before me that Mr Leighton purchased tools as invoiced to Phone Link from various tool suppliers up to the end of October 2023 to the total of \$1,942.17 (GST inclusive). During that time, I accept the documentation shows me that Mr Leighton agreed to make \$30.00 instalment payments to Power Link commencing in July 2023 that totalled \$180.00 by the time Phone Link transferred the tool account to Aotea. This meant that carried over to Aotea was a remaining \$1,732.17 (GST included) balance owed by Mr Leighton for tools purchased during his employment according to the terms of his employment that enabled him to do so.

[12] Until this time Mr Leighton's payments on his tool account had been made directly to his employer and not by way of deductions from his pay. Mr Leighton made a further payment of \$25.00 to Aotea on 10 November 2023 after which I accept the uncontested affidavit evidence of Mr Doyle that he was concerned about the balance being out of control and entered an agreement with Mr Leighton consistent with his email instruction to payroll that Mr Leighton would have \$40.00 deducted from his weekly pay. This then happened twice and then Mr Leighton resigned having by then also added further tools to his tool account for amounts of \$238.17 and \$1,661.75, the latter being for a tool kit. Mr Leighton's final pay had a further deduction from pay of

³ Paragraphs 5-7, Affidavit Justin Doyle affirmed 21 February 2025.

⁴<https://app.companiesoffice.govt.nz/companies/app/ui/pages/companies/7320676>

<https://app.companiesoffice.govt.nz/companies/app/ui/pages/companies/1197013/directors>

\$312.87 towards the tools purchased. Mr Doyle was able to retrieve from Mr Leighton a tool kit that I take to be the reversed accounting of \$1,661.75. I am satisfied by the documentation from Aotea through Mr Doyle's affidavit that there then remained a balance of \$1,557.46 owing that remains unpaid by Mr Leighton, something he agreed to do as part of a term of his employment.

[13] I have considered the above and pause to also consider the statutory provisions that require consent to deductions from pay⁵. However, I find that based on the uncontested evidence before me and the above IEA's that Mr Leighton signed his agreement to regarding deductions and the operation of a tool account that he remains in debt to his former employer as part of what he agreed to under terms of his employment. Accordingly, he is to pay Aotea \$1,557.46 for the balance of what he owes for tools that he purchased during his employment.

[14] There is no application for costs. There is nothing before me to show legal costs were incurred and in any event and the Authority operates on a tariff approach based on a starting point of investigation hearing time.⁶ The matter has been dealt with without an investigation meeting. Accordingly, I make no order for costs, but I do exercise my discretion and award the filing fee of \$71.55 to Aotea.

[15] Jacob Leighton is to pay Aotea Electric Invercargill Limited the following:

- a. \$1,557.46 for the balance of tools purchased by him through his employee tool account during his employment with Aotea;
- b. \$71.55 filing fee.

Antoinette Baker
Member of the Employment Relations Authority

⁵ Wages Protection Act 1993, ss 4 and 5.

⁶ www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1