

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

Determination Number:
AA 158/08
File Number:5106949

BETWEEN NICOLA BATHE-TAYLOR
 Applicant

AND VERGO LIMITED
 First Respondent

AND ESSENCE LIMITED
 Second Respondent

Member of Authority: G J Wood

Representatives: Nicola Bathe-Taylor on her own behalf
 No attendance for on behalf of the respondents

Investigation Meeting: 24 April 2008 at Tauranga

Determination: 24 April 2008

ORAL DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Ms Nicola Bathe-Taylor's application for monies owing has been properly filed against her former employers, Vergo Limited and Essence Limited, both currently registered companies. No statement in reply has ever been received from either respondent. No representatives of the respondents were able to be contacted for a directions conference, so this matter was set down without their input.

[2] I am satisfied from the evidence of Ms Bathe-Taylor that on 28 March 2008 both companies were properly served (at their registered address for service) with notice of the investigation meeting to take place on 24 April 2008. Unfortunately there has been no attendance or representation by either respondent at the investigation meeting. There are no current telephone

numbers available for either company or their joint sole director, Mr Hazim Mekkey, so no further contact with any representative of the companies was possible.

[3] Given the above steps and the total absence of involvement by any representative of the respondents throughout the investigation process, I was satisfied that the respondents had failed to attend without showing good cause. I therefore determined to act as fully in the matter, pursuant to clause 12 of Schedule 2 to the Act, as if the respondents had been represented.

[4] In the absence of any evidence to the contrary and Ms Bathe-Taylor having answered all my questions openly and to my satisfaction, I accept her evidence and make the following findings of fact.

[5] The applicant, Ms Nicola Bathe-Taylor had been employed by Sahara Tent Limited in Hamilton for two years. This was a company run by Mr Hazim Mekkey and a business partner, and there were no problems in her employment with that company.

[6] In February 2007, however, Ms Bathe-Taylor transferred to Tauranga to help Mr Hazim Mekkey set up a business there. She was accordingly employed by Vergo Limited, the first respondent, from February to August 2007, working nightshifts. She was later also employed by another hospitality business established by Mr Hazim Mekkey, the second respondent, Essence Limited, from May 2007 - again to assist with its establishment. There she worked day shifts.

[7] She was paid intermittently because the businesses were struggling. Money was shifted from one business to the other depending on the urgency of payments that needed to be made.

[8] In July 2007, however, Vergo Limited closed down its restaurant of the same name, ostensibly for repainting, but it never reopened. From that point on Ms Bathe-Taylor was not paid any money at all. This situation continued on for three weeks while she continued to work at Essence only.

[9] Ms Bathe-Taylor told Mr Hazim Mekkey that she could not carry on working under those conditions any more. When questioned about the situation Mr Hazim Mekkey told her that Essence was being sold and not to bother coming to work any more.

[10] About a month later Mr Hazim Mekkey disappeared. He was rumoured first to be in Auckland and now to be living in Dubai. Ms Bathe-Taylor has been unable to get the money that she was owed when she finished working for both respondents, despite extensive efforts, including assistance by Mr Mekkey's twin brother on her behalf.

[11] Ms Bathe-Taylor was never provided with any pay slips and therefore the monies that she is owed can not be calculated with total certainty. Nor can the amounts owing be separated between Vergo and Essence because of the way income and expenses were shared interchangeably. Ms Bathe-Taylor considers that she is owed, pursuant to s.131 of the Act, \$3,078.00 after tax for unpaid wages, wages in lieu of notice and holiday pay. I accept her claims in the absence of wages and time records that should have been kept by the respondents, pursuant to s.132 of the Act.

[12] Ms Bathe-Taylor has also incurred expenses of \$70.00.

[13] I therefore order the respondents, Vergo Limited and Essence Limited, on a joint and several liability basis, to pay to the applicant, Ms Nicola Bathe-Taylor, the sums of \$3,078.00 net in monies owing and \$70 in expenses.

G J Wood
Member of the Employment Relations Authority