



# New Zealand Employment Relations Authority Decisions

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## Brough v BF7 Trading Limited (Wellington) [2018] NZERA 2069; [2018] NZERA Wellington 69 (9 August 2018)

Last Updated: 17 August 2018

### IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

[2018] NZERA Wellington 69  
3029571

BETWEEN LUKE BROUGH Applicant

AND BF7 TRADING LIMITED Respondent

Member of Authority: Vicki Campbell

Representatives: Applicant in person

No appearance for the Respondent

Investigation Meeting: 8 August 2018

Oral Determination: 8 August 2018

Record of Oral

Determination:

9 August 2018

#### RECORD OF ORAL DETERMINATION OF THE AUTHORITY

**A. BF7 Trading Limited is ordered to pay to Mr Brough a total of \$2,366.28 gross under s 131 of the Employment Relations Act within 14 days of the date of this determination.**

**B. BF7 Trading Limited is ordered to pay to Mr Brough the employer's contribution to his KiwiSaver account of \$94.65 under s 131 of the Employment Relations Act within 14 days of the date of this determination.**

**C. BF7 Trading Limited is ordered to reimburse Mr Brough's costs of \$254.66 within 14 days of the date of this determination.**

#### Employment relationship problem

[1] Mr Brough worked for BF7 Trading Limited for one week in March 2018. BF7 Trading Limited is an online recruitment agency recruiting labourers in the construction industry. Mr Brough was engaged as a builder to work for BF7 on an airport hotel construction.

[2] Mr Brough claims he was not paid for the hours he worked for BF7 and claims arrears of wages for unpaid wages including one week's notice, holiday pay and the employer's contribution to his KiwiSaver account. A claim for

reimbursement of expenses for petrol and mobile phone calls was withdrawn at the investigation meeting.

[3] Mr Brough lodged his statement of problem in the Authority on 8 May 2018. The Authority was unable to effect service on BF7 and so Mr Brough was directed to serve the statement of problem personally. Mr Brough confirmed he served the statement of problem on 29 June at 6.06 pm. No statement in reply was received.

[4] On 30 July, in order to progress this matter, I proposed to the parties that this matter be progressed to an investigation meeting and made directions accordingly. The Notice of Direction and Notice of Investigation Meeting were served on BF7 at 8.30 pm on 30 July 2018. Included in the Notice of Direction was a direction to BF7 that any correspondence to the Authority must include an application for leave to respond to the matter.<sup>1</sup>

[5] To date no statement in reply has been received from BF7. BF7 has not engaged in the Authority's process.

[6] The investigation meeting was delayed 15 minutes to allow BF7 time to attend at the Authority in case its representative had become caught up in traffic or had difficulty finding a park. No representative from BF7 attended.

[7] As provided in clause 12 of Schedule 2 of the [Employment Relations Act 2000](#) (the Act) I have proceeded to act fully in the matter as if BF7 had engaged in the process

or was represented.

<sup>1</sup> See Employment Relations Regulations 2000, Regulation 8(3).

[8] As permitted by s 174E of the Act this determination has not recorded all the evidence received from Mr Brough but has stated findings of fact, expressed conclusions on issues necessary to dispose of the matter and specified orders made as a result.

### **Arrears of wages**

[9] Mr Brough claims arrears of wages being unpaid wages, a week's notice in lieu, holiday pay and BF7's contribution to his KiwiSaver account.

### ***Unpaid wages***

[10] Mr Brough has provided a copy of an extract of the time clock system used at the construction site showing the times he clocked in and out from the work site. The extract is for the week Mr Brough worked ending on Friday 16 March 2018. This records that Mr Brough worked a total of 35.75 hours. According to clause 6B(a)(i) of the employment agreement Mr Brough was to be paid at the hourly rate of \$28.00 for each hour he worked.

[11] I am satisfied Mr Brough has not been paid for his week's work and is entitled to be paid \$1,001.00 gross for the work.

### ***One week's notice***

[12] Mr Brough seeks payment of one week's notice in lieu. The employment agreement at clause 10 requires either party to give one week's notice. Mr Brough was told by telephone on Thursday 15 March 2018 that Friday 16 March would be his last day on the airport site.

[13] Mr Brough told me the contract between BF7 and the company Mr Brough was engaged to provide building services to had ended. No further offers of work were made to Mr Brough by BF7. Under those circumstances I am satisfied the employment agreement between the parties ended and Mr Brough was entitled to one week's notice.

[14] The employment agreement did not specify a guaranteed number of hours of work. Based on the hours worked by Mr Brough I have concluded his usual hours would have been 42.5. This is based on an average of 8.5 hours being worked each day over five days of the week. At an hourly rate of \$28.00 per hour one week's notice equates to \$1,190.00 gross.

### ***Holiday pay***

[15] Mr Brough is entitled to be paid holiday pay equivalent to 8% of his wages. As set out above Mr Brough's unpaid wages including one week's notice amount to

\$2,191 gross. Holiday pay on the total unpaid wages amounts to \$175.28 gross.

### ***Conclusion***

[16] BF7 Trading Limited is ordered to pay to Mr Brough a total of \$2,366.28 gross under s 131 of the Act within 14 days of the date of this determination which has been calculated as follows:

- a) \$1001.00 gross for unpaid wages;
- b) \$1,190.00 gross as payment in lieu of notice;
- c) \$175.28 gross in holiday pay.

### **Claim for KiwiSaver**

[17] Mr Brough claims a payment of 4% under section 131 being BF7's contribution to his KiwiSaver account. Mr Brough has provided me with evidence of his KiwiSaver account and is entitled to receive the employer's contribution for payment into his account.

[18] BF7 Trading Limited is ordered to pay to Mr Brough the employer's contribution to his KiwiSaver account of \$94.65 under s 131 of the Act within 14 days of the date of this determination.

### **Costs**

[19] Mr Brough represented himself and therefore has not incurred legal fees but he did incur the cost of the Authority's filing fee of \$71.56.

[20] Mr Brough also incurred disbursements when he was required to personally serve the statement of problem and then the Notice of Investigation meeting on BF7. The expenses relate to the petrol costs of travelling from Wellington to Palmerston North return and total \$183.10.

[21] BF7 Trading Limited is ordered to reimburse Mr Brough's costs of \$254.66 within 14 days of the date of this determination.

### **Certificate of determination**

[22] Pursuant to Regulation 26 of the Employment Relations Authority Regulations

2000 Mr Brough is to be provided with a certificate of determination, sealed with the seal of the Authority recording that within 14 days of the date of this determination, BF7 Trading Limited is to pay Mr Brough:

- unpaid wages and holiday pay of \$2,366.28 gross under s 131 of the

#### [Employment Relations Act;](#)

- KiwiSaver contributions of \$94.65 gross under [s 131](#) of the Employment

Relations Act;

- Costs of \$254.66.

Vicki Campbell

Member of the Employment Relations Authority

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