

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2014] NZERA Christchurch 192
5520680

BETWEEN PAUL BROWN
 Applicant

A N D GEOFFREY PYWELL
 Respondent

Member of Authority: David Appleton

Representatives: Applicant in person
 No response from the Respondent

Investigation Meeting: Determined by consideration of the papers

Date of Determination: 25 November 2014

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Mr Brown is claiming for unpaid wages and holiday pay in the total sum of \$3,149.95 net.

No response from the respondent

[2] A copy of the Statement of Problem was sent to Mr Pywell by the Authority on 30 September 2014, care of the address provided by Mr Brown in his Statement of Problem. This address was a PO Box number used by the Mr Pywell according to Mr Brown. It was the same PO Box number as appears for a company apparently owned by Mr Pywell, Commercial Training & Assessing NZ Limited. CourierPost Track and Trace shows that the Authority's letter was delivered and signed for on 1 October 2014.

[3] Notice of the Authority's case management telephone conference was also sent to Mr Pywell care of the PO Box address on 7 November 2014, and CourierPost Track and Trace shows that the Authority's letter was delivered and signed for on 8 November. The Authority telephoned Mr Pywell for the telephone conference on 19 November 2014 at 10am as notified in its letter, but Mr Pywell did not answer. The Authority left a message on Mr Pywell's voicemail service but Mr Pywell did not return the call.

[4] Despite all of these attempts at communication, no word of any kind has been received by the Authority from Mr Pywell. Mr Brown told the Authority during the telephone conference that he has also not heard from Mr Pywell for some time.

[5] I am satisfied that notice of Mr Brown's application, and the Authority's other communications, have come to the attention of Mr Pywell. In light of his complete failure to take part in the Authority's proceedings despite these communications, the Authority proceeds to make a determination on the basis of the information provided by Mr Brown.

Is Mr Pywell the correct respondent?

[6] Upon questioning Mr Brown during the telephone conference, he advised that Mr Pywell had operated the company called Commercial Training & Assessing NZ Limited. Companies Office register indicates, however, that this company had been struck-off in around April 2012. Mr Brown also stated that he had been paid through another of Mr Pywell's companies, J E Holdings Limited. However, as far as Mr Brown was concerned, he was actually employed directly by Mr Pywell as a trainer and assessor.

[7] In the absence of any information from the respondent to contradict this evidence, and in the absence of any documentary evidence relating to Mr Brown's employer, I accept the evidence of Mr Brown that he was employed directly by Mr Pywell.

Determination

[8] Mr Brown produced payslips prepared by or on behalf of J E Holdings Limited for the period March to September 2014. He also produced a copy of his

bank statements showing payments received by him from J E Holdings Limited during the same period. These documents showed monthly overpayments or underpayments between March and September 2014. Calculating the overall net payments owed to Mr Brown by Mr Pywell and the overall total amounts received by Mr Brown during the same period, it is apparent that Mr Brown is owed the sum of \$3,149.96, net.

[9] The failure of Mr Pywell to pay Mr Brown salary and holiday pay owing to him amounts to a breach of the Wages Protection Act 1983, as well as a breach of the employment agreement between the parties.

[10] Section 11 of the Wages Protection Act 1983 provides as follows:

11 Worker may recover wages

(1) Subject to subsections (2) and (3), a worker may recover from that worker's employer, by action in the Employment Relations Authority, established by the Employment Relations Act 2000, in the prescribed manner,—

(a) any deduction made (otherwise than pursuant to section 6) by that employer from wages that have been paid, or but for that deduction would have been paid, by that employer to that worker, if—

(i) that deduction was not consented to, or requested by, that worker in writing; or

(ii) the making of that deduction was consented to, or requested by, that worker in writing; but the consent or request concerned was obtained by threat of dismissal, or otherwise by duress:

(b) an amount equal to any wages required by section 7 to be paid to that worker in money, if that employer paid those wages to that worker otherwise than in money.

(2) No action under subsection (1) shall be brought after the expiration of 6 years from the date on which the cause of action concerned arose.

(3) No such action shall be brought in respect of any cause of action that arose more than 2 years before the commencement of this Act.

[11] Being satisfied that Mr Pywell has unlawfully deducted from wages properly owed to Mr Brown the net sum of \$3,149.95, I hereby **order** Mr Pywell to pay to Mr Brown the said net sum with immediate effect. Mr Pywell is also to ensure that, before payment to Mr Brown of this net sum, it is to be grossed up, and appropriate PAYE deductions and Kiwisaver deductions accounted for to the appropriate authorities.

Costs

[12] Although Mr Brown was not represented and therefore has incurred no legal fees, he has incurred the Authority's lodgement fee of \$71.56. It is appropriate for Mr Pywell to reimburse Mr Brown this sum and I therefore **further order** Mr Pywell to pay to Mr Brown the sum of \$71.56.

David Appleton
Member of the Employment Relations Authority