

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2022] NZERA 539
3151845

BETWEEN

HAMIORA CASH
Applicant

AND

DEESCAPES LIMITED
Respondent

Member of Authority: Andrew Gane

Representatives: Applicant in person
No appearance for the Respondent

Investigation Meeting: 6 July 2022 at Auckland

Submissions and other: 18 July 2022
material received:

Determination: 19 October 2022

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Hamiora Cash claims he was unjustifiably disadvantaged in his employment with Deescapes Limited (Deescapes). Mr Cash also seeks wage arrears, holiday pay, compensation and the cost of the application filing fee.

[2] Deescapes did not lodge a statement in reply and failed to actively participate in these proceedings or attend investigation meeting.

The Authority's Investigation

[3] During my investigation, I heard evidence from Mr Cash and his partner, Tonga Walton. Deescapes was not represented in the proceeding. I am satisfied the company was properly served with the statement of problem on 9 December 2021. I am also satisfied that a copy of the notice of investigation meeting and witness statements were served properly by a process server on the registered office of the company on 16 June 2022.

[4] 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 fully 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.

Issues

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

- (i) was Mr Cash unjustifiably disadvantaged by Deescapes?
- (ii) if Deescapes actions were not justified what remedies should be awarded, including compensation for humiliation, loss of dignity and injury to feelings?
- (iii) is the applicant owed any wages, including annual leave and statutory leave, as at the end of his employment, and if so, what amount might be owed?
- (iv) considerations as to costs.

Background

[6] Deescapes operates a landscaping and property maintenance business. Mr Cash found a labouring job online at Deescapes and applied by way of text. He was employed by Deescapes' manager and director, Tavita Prescott and started working as a labourer on 20 July 2020. Mr Cash signed an individual employment agreement (IEA) which he gave to Mr Prescott. Although he requested it, he never received a copy of the signed IEA. Mr Cash stated he worked 8 hours a day and his pay rate was \$19 an hour.

[7] During Mr Cash's employment he was dropped off by Ms Walton each day at the Deescapes yard in Silverdale early in the morning. He would then wait in a work van for the rest of the team to arrive. Because of the wet weather in winter there were a number of days they could not work. Mr Cash was only told they were not working on the day between 800am and 10am and he would already be at the yard waiting by himself without transport to get home. Sometimes Mr Prescott would tell Mr Cash to have a day off and he would find out the day after that the other employees had actually worked.

Bullying behaviour

[8] When Mr Cash first started work Mr Prescott would make fun of him. While Mr Cash found some of Mr Prescott's comments offensive, he did not complain because Mr Prescott claimed he was 'joking'. Over the next few months, the 'jokes' continued and escalated into derogatory comments. Mr Cash said he repeatedly asked Mr Prescott to stop "putting him down" in front his workmates. However, Mr Prescott continued to make derogatory remarks about him. Mr Prescott would frequently call him a "useless worker", say that he was worthless and stupid and that "a girl could do a better job than him".

[9] During the 2020 Christmas party, Ms Walton said she experienced Mr Prescott's conduct towards Mr Cash when Mr Prescott asked her whether he was "this useless" at home. Mr Cash said he was embarrassed and decided he did not want to continue to work for Mr Prescott. However, he felt he had to stay at Deescapes as they were struggling with money, renting, and had just found out they going to have a child. Mr Cash said he suffered stress from Mr Prescott's bullying behaviour. Ms Walton described Mr Cash as coming home from work stressed, angry and depressed.

[10] Mr Cash was told to take four weeks off over Christmas. Mr Cash texted Mr Prescott on 29 December 2020 as to when his return-to-work date was and asking when were they being paid holiday pay. After not hearing back from Mr Prescott he began looking for another job.

[11] Mr Cash resigned from Deescapes on 24 January 2021.

Personal grievance raised

[12] Mr Cash emailed Mr Prescott at Deescapes on 7 April 2021 raising a personal grievance and seeking reimbursement of arrears of wages and holiday pay.

The Authority's view of the employment relationship problem

Unjustified disadvantage

[13] I find that Mr Cash was subjected to ridicule and bullying in the workplace at Deescapes. Mr Cash and Ms Walton gave evidence they were both embarrassed and stressed by Mr Prescott's bullying behaviour. Based on the evidence before the Authority, which was not contradicted in any way, the verbal abuse escalated into bullying behaviour and undermined the mutual obligations of trust and confidence in the employment relationship. I further find that the behaviour also breached Deescapes duty of good faith to Mr Cash. Mr Prescott's actions, as Descapes manager and director, amounted to repeated unreasonable behaviour to Mr Cash's disadvantage and constituted bullying. Mr Cash has established his personal grievance for unjustified disadvantage.¹

Wage arrears

[14] Mr Cash gave evidence there were six days he worked and was not paid on 25 August; 24, 28 September; 8, 24 and 25 November 2021.

Holiday pay arrears

[15] Mr Cash stated he received no holiday pay cash from Deecapes. Mr Cash claims that at the time Mr Cash's employment came to an end, his annual holiday pay should have been calculated with reference to 8% at an hourly rate of \$19 an hour for six months, being \$1,459 (gross).²

Statutory Holidays

[16] Mr Cash was entitled to be paid for the four statutory holidays over the Christmas period: Christmas Day, Boxing Day, New Year's Day and 2 January 2021. Public holiday arrears totalled \$608 (gross).³

¹ Employment Relations Act 2000, s 103(1)(b)..

² Holidays Act 2003, s 23,27 and 83

³ Holidays Act 2003, s46.

Remedies

Unjustified disadvantage

[17] Mr Cash is entitled to remedies because of the unjustified disadvantage he suffered through the bullying behaviour he received at work. Both Mr Cash and his partner Ms Walton gave compelling evidence of the profound and harmful impact the bullying had on Mr Cash. Mr Cash stated that during his employment he felt stressed, dejected, demoralised, and anxious about how he was going to pay his bills, including his rent if he left Deescapes.

[18] I have decided that it is appropriate in all the circumstances to award Mr Cash is entitled to compensation of \$10,000 for hurt, humiliation and injury to feelings. I do not consider Mr Cash's behaviour in any way contributed towards the situation that gave rise to his personal grievance. Deescapes is ordered to pay Mr Cash compensation of \$10,000.⁴

Arrears

[19] Mr Cash is entitled to be paid for the six days he worked and was not paid. Accepting Mr Cash's evidence, and in the absence of any evidence to the contrary, I award him the sum of \$912 (gross).

[20] Mr Cash was also entitled to be paid for the four statutory holidays over the Christmas period: Christmas Day, Boxing Day, New Year's Day and 2 January 2021. Accepting Mr Cash's evidence, and in absence of any evidence to contrary I award him the sum of \$608 (gross).

[21] Mr Cash's annual leave should have been calculated with reference to 8% at an hourly rate of \$19/hour for six months being \$1,459 (gross). Accepting Mr Cash's evidence, and in absence of any evidence to contrary I award him the sum of \$1,459 (gross).

Total Arrears

[22] Mr Cash was entitled to be paid total arrears of public holidays over the Christmas break, accordingly, I award Mr Cash the sum of \$2,979 (gross).

⁴ Employment Relations Act, s124.

Interest

[23] Mr Cash is entitled to recovered interest on the arrears and Deescapes is liable for payment of that interest calculated from the date he resigned, being 24 January 2021. Having carefully considered the matter, Deescapes is ordered to pay interest, using the civil debt interest calculator, from 24 January 2021.⁵

Summary of orders

[24] Mr Cash was unjustifiably disadvantaged for which remedies have been awarded. His claims for wages arrears and holiday pay have been upheld. The following orders are made:

- (a) Within 28 days of the date of determination Deescapes is ordered to pay Mr Cash the following sums:
 - (i) compensation for hurt, humiliation and injury to feelings of \$10,000.
 - (ii) wage arrears of \$2,979 (gross); and
- (b) Within 28 days of the date of determination Deescapes is to calculate and pay Mr Cash interest on the arrears as awarded in paragraph [25] above.

Costs

[25] Mr Cash was unrepresented and therefore has no claim for costs. However, Deescapes is ordered to pay Mr Cash the filing fee of \$71.56.

Andrew Gane
Member of the Employment Relations Authority

⁵ <https://www.justice.govt.nz/fines/civil-debt-interest-calculator/>.