

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 36/10
5289054

BETWEEN BEVERLEY CHANDLER
 Applicant

AND FIELDWORKERS SERVICES
 LIMITED
 Respondent

Member of Authority: P R Stapp

Representatives: Miran Milosevic for Applicant
 John Meyer for Respondent

Investigation Meeting: 22 February 2010 at Palmerston North

Determination: 25 February 2010

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Beverley Chandler's has claimed that her employer owes her unpaid wages and the Authority should impose penalties for a breach of her employment agreement and a breach of good faith by her employer.

[2] John Meyer, company director, accepted that wages are owed to Ms Chandler, but he says that the company does not have the funds to pay. He says the company has not been trading and has very little funds. He says the company will pay when it receives funds, and he hopes that will happen by 19 March 2010.

[3] Up until the Authority's investigation meeting the company had been referred to as Field Services Limited, the employer. By consent Mr Meyer accepted that Fieldworkers Services Limited is the correct respondent and was Ms Chandler's employer. She accepted this too. I accept that an error has been made and pursuant to

s 221 (b) of the Employment Relations Act I amend the name of the respondent accordingly. Under s 221 (d) of the Act I direct that the entitling be amended accordingly.

Issues

[4] How much wages does Fieldworkers Services Limited owe Beverley Chandler?

[5] Are there any breaches of the employment agreement and has there been a breach of good faith?

[6] Should there be any penalties?

The facts

[7] Beverley Chandler was employed by Fieldworkers Services Limited. It was agreed she would be paid \$13.98 per hour. Mr Meyer accepted that Ms Chandler probably did work two extra hours that had been altered on one of her time sheets. Mr Meyer produced time records that indicate that Ms Chandler is owed \$4,434.95 gross.

[8] Mr Meyer accepted that the company did not provide the wages and time records when requested on two separate occasions by Ms Chandler and her lawyer. He explained that he did not have time to photocopy the details after a full day at work. He did provide the documents at the Authority's investigation meeting.

[9] I reserved any determination on making an order on the two periods of wages that Ms Chandler says she was not paid for working. Mr Meyer undertook, and Ms Chandler agreed, to check her claims. He said that if it was correct he would accept that she should be paid for the claims.

[10] Ms Chandler has incurred legal costs to pursue her claims and to be represented at the Authority's investigation meeting.

Determination

[11] Fieldworkers Services Limited owes Beverley Chandler the sum of \$4,434.95 wages. In addition, Fieldworkers Services Limited is required to pay interest at 4% pa on \$4,434.95 from 23 April 2009 until the date of the Authority's investigation meeting (22 February 2010) because she has been denied the benefit of the use of her wages that she was entitled to. I calculate the interest as \$148.72.

[12] Ms Chandler was only paid 5 times during her employment when her employment agreement provided for payment to be made in arrears no later than Thursday subsequent to the end of the pay week. For 13 weeks she was not paid. I assume she understood the company's difficulties during her employment, and has only claimed the money after she left her employment. She was entitled to be fully paid up when her employment ended.

[13] In this regard the employer has breached its obligations under the employment agreement to pay on time, but there are mitigating circumstances where the company had no funds. Mr Meyer has not proved that he did everything possible to try and make provision for the wages to be paid.

[14] Also, the respondent failed to provide wage and time records when requested by Ms Chandler, her first lawyer and the Authority, until the Authority's investigation meeting. In failing to comply with the request he has breached the Act at the time the requests were made and failed to be communicative under s 4 of the Act. I hold that the employer's failure to meet the requests has been deliberate.

[15] Mr Meyer provided the employment agreement and time records during the investigation meeting that has helped with the calculations. These should have been provided much earlier when requested and that could have avoided the time taken to check the calculations and check the records during the Authority's investigation meeting. Fortunately not a great deal of time was required. Prior to receiving the records Ms Chandler and her representative could only make an estimate. Mr Meyer has always accepted that the sum of wages was owed, but says that the company could only pay if funds were available.

[16] I have decided not to impose a penalty or penalties that would in any way jeopardise Ms Chandler getting her wages. Also if any penalties were imposed I would have ordered the penalty sum to be paid to the Crown as the breaches related to public policy and because the payment of interest is sufficient compensation for the loss of the benefit of the money owing to Ms Chandler. Also, I am not prepared to put the tax payer to the expense of a recovery for any penalties when there is no certainty that the company will be able to pay and the expense for the recovery would exceed the amount of the penalties. I accept Mr Meyer's assertions about the dire financial situation of the company and that he is waiting to receive an injection of funds to be able to pay the outstanding wages. However, the respondent should understand that my decision not to impose any penalties in any way condones what has happened. The company had a responsibility to make provision and arrange money to pay wages on time.

Orders of the Authority

[17] That Fieldworkers Services Limited is to pay Beverley Chandler the sum of \$4,434.95 wages and the sum of \$148.72 interest on that amount. In addition Fieldworkers Services Limited is to pay Beverley Chandler interest at a rate of 4% pa from 23 February 2010 until the date that the amount and or amounts due is/are paid.

Costs

[18] Ms Chandler is entitled to costs. She has been put to the unnecessary cost and expense of these proceedings by the actions of the respondent. She was entitled to be represented and this has involved preparation time and attendance at the Authority's investigation meeting. I set the tariff at \$1,500 as a contribution to her costs. I order Fieldworkers Services Limited to pay Beverley Chandler the sum of \$1,500 contribution to her reasonable costs and the \$70 filing fee in addition.

Leave

[19] Leave is granted for any variation on this order in regard to the claims associated with the two periods of work that Mr Meyer has undertaken to checkout in a reasonable time.

[20] Leave is granted for either party to return to the Authority to calculate the remaining interest to be paid if any problems on the calculation occur between the parties.

Summary of orders

[21] I order Fieldworkers Services Limited to pay Beverley Chandler:

- \$4,434.95 wages.
- \$148.72 interest.
- Interest at a rate of 4% pa from 23 February 2010 until the date that the amount and or amounts due is/are paid.
- \$1,500 contribution to her reasonable costs.
- \$70 filing fee.

P R Stapp
Member of the Employment Relations Authority