

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2023] NZERA 397  
3212539

BETWEEN                      JAI KISHAN CHAURASIA  
   Applicant  
  
AND                                VIGIL SECURITY LIMITED  
   Respondent

Member of Authority:      Alastair Dumbleton  
  
Representatives:            Applicant in person  
   No appearance for the Respondent  
  
Investigation Meeting:      24 July 2023  
  
Determination:               27 July 2023

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     The applicant Jai Kishan Chaurasia claims to recover annual holiday pay owing to him upon termination of his employment with the respondent Vigil Security Ltd (Vigil).

[2]     Mr Chaurasia was employed by Vigil as a Security Guard between August 2019 and January 2022 when he resigned.

[3]     A payslip issued by Vigil in early January 2022 shows the balance of his annual leave entitlement to be 389.23 hours.

[4] Mr Chaurasia was being paid at the rate of the minimum wage which was then \$20.00 per hour. His holiday pay entitlement at termination was therefore \$7,784.60.

[5] Later the rate of \$21.20 became the minimum wage from 1 April 2022, but that was after Mr Chaurasia had finished his job with Vigil.

[6] Mr Chaurasia has provided the Authority with the text messages he sent to Vigil over many months in trying to recover his holiday pay. Nathan Tanielu a manager, director and part owner of Vigil, replied to some of them with promises that the payment was being attended to by the accountant. He guaranteed payment in full would be made to Mr Chaurasia.

[7] The Authority is satisfied that Mr Chaurasia was entitled to the annual holiday pay claimed and that he has not received any of it.

[8] The Authority is also satisfied that Vigil was notified of the claim when it was lodged but did not respond with a statement in reply. Vigil was also notified of an Authority case management conference and the opportunity of participating in it by telephone, but did not do so. Vigil was notified of an investigation meeting to be held on 24 July 2023, but did not attend. Earlier Vigil was not willing to attend mediation.

[9] A check of the Companies office on-line has shown that Vigil remains a registered company. An annual return was filed by it only a few weeks ago.

[10] Vigil did try to contact the Authority, but not until Sunday evening at 7.33 pm, the night before the investigation meeting notified for 24 July. A director asked whether the investigation meeting, notified to Vigil on 5 July, could be postponed. It proceeded without Vigil.

[11] The company has acted in complete disregard its responsibilities, apparently in the hope the problem would all go away if nothing was done except try and avoid it.

### **Order to pay annual holiday pay**

[12] To resolve the problem brought by Mr Chaurasia, the Authority orders Vigil Security Ltd to pay him \$7,784.60 annual holiday pay. The entitlement to that sum is provided in s 24 of the Holidays Act 2003 and is enforceable under s 77 of the Act.

## **Interest**

[13] The applicant is entitled to recover interest on the holiday pay owing, as he should have been able to use that money from January 2022 onwards. Vigil wrongfully retained it for its own purposes.

[14] Interest is to be paid on \$7,784, from 1 February 2022 until the entire amount is paid, under clause 11(1) of Schedule 2 of the Employment Relations Act 2000 (the ER Act). The calculation of the amount is to be made using the Civil Debt Interest Calculator available at [www.justice.govt.nz/fines/civil-debt-interest-calculator](http://www.justice.govt.nz/fines/civil-debt-interest-calculator).

## **Payment within 14 days**

[15] The holiday pay and interest are to be paid in full to Mr Chaurasia within 14 days of the date of this determination. The investigation meeting will be adjourned to allow that to happen and for Mr Chaurasia to advise the Authority when it has been done.

## **Directors may be joined**

[16] If the annual holiday pay and interest on it is not paid, or if an arrangement to pay is not made to the satisfaction of Mr Chaurasia, the Authority will consider joining the directors of the respondent company to these proceedings. They will each then become personally liable to pay the money to any extent Vigil is unable to. This course is open under s 77A of the Holidays Act, when a person from whom holiday pay is sought to be recovered is a person involved in the non-compliance with the Act.

[17] Joinder of parties to these proceedings is a course open to the Authority of its own motion under s 221 of the ER Act.

## **Leave granted**

[18] Mr Chaurasia is given leave to recover the money from the directors under s 77A(2) of the Holidays Act.

[19] From the evidence of Mr Chaurasia, the Authority is satisfied of the involvement of the two directors and joint owners of Vigil, Nathan Tanielu and Trey Tanielu. They were hands-on director-managers of Vigil and were involved in the failure of Vigil to comply with the Holidays Act.

[20] A copy of this determination will be sent to 6 Foster Place, Mangere East, putting the directors, Nathan and Trey Tanielu, on notice of the proposal to join them to the proceedings if the arrears are not paid by Vigil within 14 days, or if an arrangement for payment is not made with Mr Chaurasia to his satisfaction.

[21] The directors may if they wish, within 14 days, advise the Authority in writing of any good reason why they should not be joined to these proceedings and become personally liable to pay Mr Chaurasia what he has been owed since January 2022.

[22] The adjournment of the investigation meeting will also allow for orders of compliance to be made against the company and the directors, if they have been joined, in the event they fail to comply with this determination. The Authority will consider making a compliance order of its own motion, upon being satisfied the arrears remain unpaid by Vigil or the directors, if that is the case.

[23] Further non-compliance may lead to an application by Mr Chaurasia to the Employment Court for enforcement of a compliance order, if one is made, by way of fines or imprisonment.

### **Costs and expenses**

[24] As Mr Chaurasia was not represented by an advocate or lawyer, no order for costs is made.

[25] Mr Chaurasia is also to be paid by Vigil as an expense, the fee he paid of \$71.56 to bring his application to the Authority.