

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 230
5366070

BETWEEN MANJIT SINGH CHAWLA
 Applicant

A N D JMD HOSPITALITY LIMITED
 Respondent

Member of Authority: James Crichton

Representatives: Applicant in Person
 No appearance for Respondent

Investigation meeting: 29 June 2012 at Auckland

Date of Determination: 6 July 2012

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Mr Chawla) alleges that he is owed wages and other emoluments from his employment with the respondent (JMD).

[2] JMD took no part in the Authority's proceedings and declined to engage in any way with the Authority's process. There was no statement in reply filed and served and no other engagement by JMD with the Authority and its procedure.

[3] However, it is plain from the Authority's file that service on the registered office of JMD has been effected in relation to the time and date for the Authority's investigation meeting and that being the position, given the fact that JMD is still trading, the Authority must assume that JMD's failure to engage with the Authority's process is deliberate rather than inadvertent.

[4] At the commencement of the investigation meeting on 29 June 2012, the Authority did not proceed with the investigation immediately but waited for some 10

minutes to see whether JMD would attend but notwithstanding that approach, when the investigation commenced, the respondent employer was not represented. The Authority decided that, in all the circumstances, it was appropriate to proceed with the matter rather than further adjourn it, particularly as Mr Chawla had attended at Auckland from his new home in Palmerston North and had incurred costs in travelling to the investigation meeting.

[5] Mr Chawla told the Authority that he commenced employment with JMD on Wednesday, 6 April 2011 having been approached by Mr Singh of JMD Hospitality to work for him as a chef in his restaurant in Parnell.

[6] The two men agreed that Mr Chawla would be paid for 40 hours per week at \$17 per hour but that in addition, he would received free bed and lodgings and the transport costs between the lodgings and the restaurant.

[7] In fact, the hours that Mr Chawla worked were significantly in excess of the hours agreed because, even on the basis of the span of hours proposed by the employer, that was more than a 40 hour week because the hours required were from 5pm until 11pm seven days a week. What is more, Mr Chawla told the Authority (and it accepts) that from time to time he was required to produce lunches as well and regularly started his preparation for the dinner menu at 3pm rather than the 5pm stipulated by JMD.

[8] Mr Chawla said that he worked a total of 22 weeks for the employer but only got paid for 15 weeks and then only on the basis of a 40 hour week at \$17 per hour. He was never paid for the transport costs nor did he ever receive holiday pay when the employment ended. Because he was employed for seven days a week, he had no opportunity to take a holiday during the employment.

[9] Mr Chawla also told the Authority in his evidence that JMD did not account to the Inland Revenue Department for the PAYE which ought to have been deducted from Mr Chawla's wages and he had established this fact by seeking a statement from the Inland Revenue Department in relation to his own circumstances.

[10] Finally, Mr Chawla pointed out that he had incurred a cost in attending the investigation meeting of \$308 being the return air fare Palmerston North to Auckland and he sought to recover that sum as well.

Determination

[11] The Authority is satisfied that Mr Chawla told it the truth when he gave his evidence under affirmation. Nothing in his demeanour suggested that he was being disingenuous and his claim is far from extravagant.

[12] The absence of the employer from the proceedings suggested to the Authority that the employer was disinclined to engage, not because it disputed the claim but because the claim was made out.

[13] To address Mr Chawla's application, the Authority makes the following orders:

- (a) JMD is to pay to Mr Chawla by way of a contribution to lost wages the gross sum of \$3,800; and
- (b) JMD is to pay to Mr Chawla the sum of \$1,197 gross as unpaid holiday pay; and
- (c) JMD is to pay to Mr Chawla as a contribution to his unpaid travel costs the sum of \$1,000 net.

[14] A certificate of determination is to issue with this determination.

Costs

[15] Costs are to lie where they fall.

James Crichton
Member of the Employment Relations Authority