

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

2018 NZERA Christchurch 197
3036631

BETWEEN CODY CLARKE
 Applicant

A N D RAEBURN LIMITED
 Respondent

Member of Authority: Peter van Keulen

Representatives: Codi Lilley, counsel for the Applicant
 No appearance for the Respondent

Investigation Meeting: 21 December 2018

Oral Determination: 21 December 2018

Written Determination issued: 21 December 2018

DETERMINATION OF THE AUTHORITY

- A. Raeburn Limited is to pay Mr Clarke \$3,157.52 (gross) within 28 days of this determination.**

- B. Raeburn Limited is to pay Mr Clarke \$86.00 interest on this amount within 28 days.**

- C. Raeburn Limited is to pay Mr Clarke the sum of \$1,800.00 as a contribution to Mr Clarke's costs plus \$71.56 for the filing fee in this matter, within 28 days of this determination.**

Employment relationship problem

[1] Raeburn Limited employed Cody Clarke under a casual employment relationship from 12 November 2017 until 12 March 2018.

[2] Mr Clarke says that between 12 February 2018 and 12 March 2018 he worked 183 hours for which he was not paid. Mr Clarke says his wage rate was \$18.00 per hour plus 8% for holiday pay, paid with his hourly wage pursuant to s 28 of the Holidays Act 2003, being an additional \$1.44 per hour.

[3] Therefore, at the rate of \$19.44 for 183 hours, Mr Clarke was owed a total of \$3,557.52 (gross) in wage arrears at the end of his employment.

[4] Of this amount owed Raeburn has only paid Mr Clarke \$400.00.

Progress of this matter

[5] Raeburn has not participated in the investigation of Mr Clarke's wage arrears claim.

[6] The Authority served the statement of problem on Raeburn on 24 August 2018. A statement in reply was not lodged.

[7] The Authority then followed up with Alastair Johnston, one of the directors and shareholders of Raeburn, on 11 September 2018. Mr Johnston, in a telephone call and then a subsequent email, advised that Raeburn intended to pay the amount owing to Mr Clarke.

[8] The Authority then set this matter down for a case management conference by telephone on 3 October 2018. Despite receiving, and acknowledging, notice of the telephone conference, no one from Raeburn made themselves available to participate in the call. As I was satisfied that Raeburn was aware of the call, I proceeded with the telephone conference without Raeburn.

[9] In the case management conference, I directed Raeburn to lodge with the Authority and serve on Mr Clarke's solicitor, copies of wage and time records by 17 October 2018. I also directed Mr Clarke to lodge and serve a statement of evidence by 31 October 2018,

setting out his calculation of the wage arrears, any payments received and any correspondence or discussions he had had with Raeburn over payment. A notice of direction confirming this direction was served on Raeburn.

[10] Raeburn did not lodge and serve the wage and time records as directed.

[11] Mr Clarke lodged and served his evidence as directed. Raeburn acknowledged receiving that evidence in an email where it stated “As I have said I’m happy to pay the money....”

[12] Despite this assurance, Raeburn did not make any payment to Mr Clarke in November 2018 so I set this matter down for an investigation meeting.

[13] I am satisfied that Raeburn received the statement of problem, the notice of direction, Mr Clarke’s evidence and the notice of the investigation meeting but it has failed to engage in this matter other than to advise that Raeburn has always intended to pay Mr Clarke.

[14] In all of the circumstances, it is safe for me to proceed to determine this matter without Raeburn’s participation in my investigation.

Discussion

[15] As Raeburn has failed to produce wage and time records as directed, I can rely on Mr Clarke’s records of hours worked and wages owed¹.

[16] Mr Clarke has also produced copies of correspondence with Raeburn. It is clear that Raeburn does not dispute the amount owed to Mr Clarke, it simply has not paid – despite various assurances that it would pay and even that it had paid but the money had gone to the wrong account.

[17] I am satisfied that Mr Clarke is entitled to be paid the amount he claims and that Raeburn has failed to pay Mr Clarke this amount, except for \$400.00.

[18] Therefore, I order Raeburn to pay Mr Clarke, \$3,157.52 for wage arrears.

¹ Section 132 of the Employment Relations Act 2000.

[19] Mr Clarke is also entitled to interest on the wage arrears. I award interest pursuant to clause 11 of Schedule 2 of the Employment Relations Act 2000, and Schedule 2 of the Interest on Money Claims Act 2016. This amount, calculated using the civil debt interest calculator, is \$86.00.

Costs

[20] I will assess costs based on the principles applied to awarding costs in the Authority, as set out in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*² and other relevant Employment Court and Court of Appeal decisions³.

[21] The starting point for my assessment is to determine if costs should be awarded. Mr Clarke has been successful with his claim and there is no reason to depart from the normal practice of awarding costs to a successful party.

[22] The next step is to consider the basis for assessing quantum. Again, there is no reason to depart from normal practice when awarding costs in the Authority, which for this step is to base the amount on an application of a daily tariff.

[23] The current daily tariff is \$4,500.00 for a single day investigation meeting. The investigation meeting only took a part day so I will award a portion of that amount representing one third of a day, so \$1,500.00.

[24] The final step is to consider whether I should adjust the tariff up or down given the conduct of this matter. In my view there was extra work undertaken by counsel for Mr Clarke due to Raeburn's lack of engagement - counsel completed an accurate analysis of what was owed and did this without the assistance of wage and time records. Additional attendances were required (both in the Authority and with Mr Clarke) because of Raeburn's lack of engagement. I believe an uplift is appropriate and will add an additional \$300.00 to the daily tariff assessment, giving a total of \$1,800.00.

² *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz* [2005] 1 ERNZ 808

³ *Blue Star Print Group (NZ) Ltd v. Mitchell* [2010] NZCA 385, *Booth v. Big Kahuna Holdings Ltd* [2015] NZEmpC 4, *Stevens v. Hapag-Lloyd (NZ) Ltd* [2015] NZEmpC 28, *Davide Fagotti v. Acme & Co Ltd* [2015] NZEmpC 135, *GSTech Limited v A labour Inspector of MBIE* [2018] NZEmpC 127

[25] Mr Clarke is also entitled to payment for the filing fee on the statement of problem that he has lodged with the Authority.

Orders

[26] Raeburn Limited is to pay Mr Clarke \$3,157.52 within 28 days of this determination.

[27] Raeburn Limited is to pay Mr Clarke \$86.00 for interest on the wage arrears, within 28 days of this determination.

[28] Raeburn Limited is to pay Mr Clarke \$1,800.00 as a contribution to the costs incurred in this matter together with the sum of \$71.56, within 28 days of this determination.

Peter van Keulen
Member of the Employment Relations Authority