

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2024] NZERA 64  
3227359

BETWEEN	COMBINED LOGISTICS LIMITED Applicant
AND	BRAD RUDKIN Respondent

Authority Member:	Natasha Szeto
Representatives:	Bryce Bluett, counsel for the Applicant No appearance for the Respondent
Investigation Meeting:	14 November 2023 by AVL
Submissions and information received:	17 November 2023
Determination:	7 February 2024

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Brad Rudkin was employed by Combined Logistics Limited (Combined Logistics) as a truck driver for approximately three months in 2021 and three months in 2022.

[2] During both terms of his employment, Mr Rudkin took annual leave in advance of his entitlement. In the second term of his employment he undertook training for his Class 5 Drivers' Licence which included a Dangerous Goods training course.

[3] Under the terms of agreements he had with Combined Logistics, Mr Rudkin had agreed to repay costs of training if he left the company within one or two years.

[4] Mr Rudkin ended his employment with Combined Logistics approximately three months after he was re-employed in 2022. The company now seeks to recover the amounts it paid him as annual leave in advance of entitlements, as well as the cost of the training courses.

### **The Authority's investigation**

[5] An investigation meeting was held on 14 November 2023 with Combined Logistics and its representative attending by audio visual link (AVL). There was no appearance by, or for, Mr Rudkin.

[6] The Authority has the power to proceed with a matter under clause 12 of Schedule 2 of the Employment Relations Act 2000 (the Act), if any party, without good cause, fails to attend, and may act fully in the matter before it, as if that party had duly attended or been represented.

[7] Mr Rudkin has not engaged with the Authority's investigation at any point. On 8 August 2023, the Authority convened a case management conference (CMC). Notice of the conference was couriered to Mr Rudkin on 21 July 2023 at an address provided by Combined Logistics, and where personal service had been effected in June 2023.

[8] Combined Logistics attended the CMC, but there was no appearance by or for the Respondent. I was satisfied that Mr Rudkin was notified of the CMC and it proceeded in his absence. The Investigation Meeting was set down for 14 November 2023 in Wellington, and I permitted Combined Logistics to appear by AVL.

[9] On 12 October 2023, the Authority served the Notice of Investigation Meeting and Applicant's statement on the Respondent by sending the notice and document by registered post to his last known residence.

[10] The Authority emailed the parties on 31 October 2023 at the email address given for service on the Statement of Problem, and through which Mr Rudkin had previously engaged with the Applicant. On 13 November 2023, the Notice of Investigation Meeting was sent to the email address used by Mr Rudkin in July 2022. In the email, both parties were advised the Investigation Meeting would proceed on 14 November 2023 at 9:30am.

[11] Regulation 16 of the Employment Relations Authority Regulations 2000 (the Regulations) requires a Notice of Investigation Meeting to be served by an officer of

the Authority, or by an authorised agent of the Authority (regulation 16(1)). If the person to be served has not given an address for service, service of a notice may be effected by sending the notice by registered post to the last known residence or place of business of the person to be served (regulation 16(3)(a)(ii)). Service of a notice may also be effected in such other manner as the Authority directs (regulation 16(3)(a)(iv)).

[12] I am satisfied that service was effected by sending the Notice of Investigation Meeting by registered post to Mr Rudkin's last known residence on 12 October 2023, and by emails sent to Mr Rudkin's last known email address on 31 October 2023 and 13 November 2023.

[13] Included in the notice that was sent to Mr Rudkin was advice that if the respondent did not attend the investigation meeting, the Authority may, without hearing the evidence from the respondent, issue a determination in favour of the applicant.

[14] For the Authority's investigation, a written witness statement was lodged by Ms Cheryl Boyd, Accounts and Payroll Manager, on behalf of the company, and she answered questions from me under affirmation. I also heard from Mr Malcolm Daffron, Director, who answered my questions under affirmation.

[15] As permitted by s 174E of the Act, this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified the orders made. It has not recorded all the evidence and submissions received, but all information submitted to the Authority has been considered.

## **Issues**

[16] The issue that the Authority is to investigate and determine is:

- (a) Whether Mr Rudkin should be ordered to repay to Combined Logistics, sums related to annual leave being taken in advance of entitlement, and for licencing and training course costs incurred because Mr Rudkin left his employment within two years of the training date.

[17] Remedies sought by Combined Logistics are:

- (a) The full amount of the sums being \$6,234.67; and
- (b) Interest from 21 July 2022 (date of invoice) until the date of this determination.

- (c) Costs including filing fee.

**Relevant background**

[18] Mr Rudkin was employed by Combined Logistics on a causal contract on 18 May 2021 and on a full-time basis from 24 May 2021 to 18 August 2021. He was re-employed by Combined Logistics from 11 April 2022 to 21 July 2022.

[19] During his first period of employment, Mr Rudkin took annual leave in advance of his entitlement, for the birth of his son. The amount paid to him for this annual leave in advance was not recovered by the company before he left or any time after.

[20] After Mr Rudkin was re-employed by Combined Logistics on 11 April 2022, the parties signed an Individual Employment Agreement on 20 May 2022.

[21] Combined Logistic's Business Rules and Policies were incorporated into the individual employment agreement through clause 21 which states:

The employee agrees to abide by the Company's Business Rules and Policies attached to this agreement and recognizes the employer's right to vary these from time to time as the employer requires.

[22] The Business Rules and Policies document sets out:

15. Training:...Combined Logistics encourages employees with ongoing training. Employees required by the employer to attend Training courses as a requirement of the job will be paid for their attendance time at your hourly rate as per your agreement and any associated costs of these training courses will meet by the employer, but if you leave within two years of the training date you may be required to repay the cost of training.

[23] On 20 May 2022, Combined Logistics and Mr Rudkin also signed a "Return of Service agreement" which included the following "expectations of both parties":

Combined Logistics / CID LTD will pay for Brad Rudkin to undertake and complete his Class 5 Drivers License.

Time taken to complete the courses required will be paid as part of wages.

Brad is to complete 1-year continuous employment with Combined Logistics / CID LTD upon gaining the full certification.

Should the employment end before this 1x year anniversary of certification then Combined Logistics will recover the Full cost of training from Final Pay.

[24] During his second period of employment with Combined Logistics, Mr Rudkin took approximately four weeks annual leave in advance of entitlement, to recover from an injury. He also completed a Class 5 Driver Training course that included a Dangerous Goods Training Course. Combined Logistics paid for both of these courses.

[25] Mr Rudkin subsequently resigned from his employment with Combined Logistics in July 2022.

[26] Combined Logistics sent an invoice dated 21 July 2022 to Mr Rudkin itemising the debt owed to it as follows:

(a)	Annual Leave in advance WE 18.08.21 Birth of Son	\$574.29
(b)	Annual Leave in advance WE 30.06.22	\$3,893.98
(c)	Class 5 Driver Training	\$1,380
(d)	Dangerous Goods Training Course	\$386.40

[27] In email correspondence with Combined Logistics, Mr Rudkin disputed he owed the company anything for the “DG” (Dangerous Goods Training Course) as he “did not sign any plan with that”. Mr Rudkin did not dispute the annual leave taken in advance. He advised the company that he would pay \$50 per week “when off ACC”. This was not acceptable to Combined Logistics and it advised Mr Rudkin of that.

[28] As at the date of the investigation meeting, Mr Rudkin had not paid any amount of the outstanding debt to Combined Logistics.

### **Annual leave paid in advance**

[29] Employees are entitled to four weeks paid annual holidays after the end of each 12 months of continuous employment.<sup>1</sup> The Holidays Act 2003 provides different calculations for annual holiday pay depending on when the entitlement has arisen.

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<sup>1</sup> Section 16 of the Holidays Act 2003.

[30] If employment ends within 12 months, the employer must pay the employee 8% of the employee's gross earnings since the commencement of employment, less any amount paid to the employee for annual holidays taken in advance.<sup>2</sup>

[31] Combined Logistics says Mr Rudkin took two periods of annual leave in advance of his entitlement. The first period related to the week ending 18 August 2021. The amount was unable to be deducted from his final pay because the amount Mr Rudkin owed the company exceeded his final pay.

[32] I accept Mr Daffron's evidence that when Mr Rudkin was re-employed by Combined Logistics in 2022, there was a verbal agreement between them that Mr Rudkin would repay the debt once he had some wages. That did not come to pass.

[33] In his second period of employment with Combined Logistics, Mr Rudkin took a further period of four weeks' annual leave in advance.

[34] On 8 June 2022 Mr Rudkin signed an agreement with Combined Logistics entitled: "Payment of Advance Holiday Pay". In the agreement, Mr Rudkin acknowledged that Annual Leave had been paid in advance for the week ending 8 June 2022. He agreed to wages deduction for repayment of all debt in relation to the Return of Service training agreement and all advance holiday payments in his final pay.

[35] Again, amounts for annual leave in advance were not deducted from Mr Rudkin's final pay, as the company was only given one week's notice of Mr Rudkin's resignation. Combined Logistics had expected Mr Rudkin to return to work after a period of being away from work due to an injury.

[36] The email communications between the parties were provided to the Authority. Based on this information, I am satisfied that Mr Rudkin acknowledged he owed Combined Logistics a debt including annual leave paid in advance and training costs, and initially offered to pay the amount off in \$50.00 instalments once per week (once he was off ACC). That arrangement was not acceptable to the company.

[37] For the first period of Mr Rudkin's employment he was paid annual leave in advance of \$574.29 which he did not repay.

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<sup>2</sup> Section 23 of the Holidays Act 2003.

[38] For the second period of Mr Rudkin's employment he was paid approximately 4 weeks annual leave in advance of \$3,893.98 which he did not repay.

[39] Based on the evidence before the Authority, I conclude that Mr Rudkin owes Combined Logistics a total of \$4,468.27 for annual leave taken in advance.

### **Costs of training**

[40] The Authority has been provided with an invoice (dated 19 May 2022) for Mr Rudkin's Class 5 Drivers' Licence training (from TR Group Limited), amounting to \$1380.00. The Authority has also been provided with an Order Confirmation from Axiom Training (dated 6 July 2022) for the Dangerous Goods training, amounting to \$386.40.

[41] Mr Rudkin's individual employment agreement stated that he may be required to repay the costs of training within two years of the training date. This agreement was superseded by the more specific Return of Service agreement relating to the Class 5 Drivers' Licence which allowed Combined Logistics to recover the full cost of the training if Mr Rudkin's employment ended before the one-year anniversary of certification. Ultimately, it is immaterial whether the relevant term is one or two years, as Mr Rudkin left his employment only two months after signing the Return of Service Agreement.

[42] I accept Combined Logistic's evidence that the Return of Service Agreement applied to both courses, despite the Dangerous Goods course being more than a month later in time. The Return of Service Agreement the parties entered into on 20 May 2022 resulted from the invoice for the course being sent on 19 May 2022. However the Return of Service Agreement covered the courses relating to Mr Rudkin undertaking and completing his Class 5 Drivers' Licence, and I accept the Dangerous Goods course was part of completing that licence.

[43] Combined Logistics sent an invoice to Mr Rudkin on 21 June 2022 setting out the amount of the debt and what it related to. In email communications from July 2022, Mr Rudkin acknowledged the debt he owed, but sought a payment plan of \$50.00 per week (once off ACC) that was not acceptable to the company.

[44] Under the terms of his individual employment agreement, the Business Rules and Policies, and the Return of Service Agreement, Mr Rudkin had agreed to repay

Combined Logistics for training if he left within one to two years. Mr Rudkin left his employment within one year. Based on the evidence before the Authority, I conclude that Mr Rudkin owes Combined Logistics \$1,766.40 for the training courses.

### **Interest**

[45] Combined Logistics claims payment of interest on the sums owed to it. The Authority's power to award interest arises under clause 11, Schedule 2 of the Act. This provision gives the Authority discretion to order interest in any matter involving the recovery of any money, such interest to be calculated in accordance with Schedule 2 of the Interest on Money Claims Act 2016.

[46] I consider this is an appropriate matter to order that interest be paid. At the investigation meeting, Combined Logistics confirmed its claim for interest arose on 21 July 2022 being the date the invoice was issued to Mr Rudkin, and should be calculated to the date of the determination to give certainty as to the debt.

[47] Based on the date of this determination, the amount of interest is \$434.14 using the Civil Debt Interest Calculator<sup>3</sup>, and I order that to be paid.

### **Costs**

[48] The power of the Authority to award costs is set out in Schedule 2, clause 15 of the Act. As the successful party, Combined Logistics is entitled to an award of costs as well as reimbursement of the filing fee of \$71.56.

[49] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. If they are not able to do so and an Authority determination of costs is needed, any party seeking costs may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of the written determination in this matter. From the date of service of that memorandum, the other party will then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

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<sup>3</sup> Civil Debt Interest Calculator is at: <https://www.justice.govt.nz/fines/civil-debt-interest-calculator/> calculated as at 7 February 2024.

[50] The parties could expect the Authority to determine costs and ask to do so on its usual notional daily rate, unless particular circumstances or factors required an upward or downward adjustment of that tariff.<sup>4</sup>

### **Orders**

[51] Brad Rudkin is ordered to make the following payments to Combined Logistics Limited within 28 days of the date of this determination:

- (a) Repayment of \$6,234.67 debt, comprising \$4,468.27 for annual leave taken in advance and \$1,766.40 for training costs; and
- (b) Interest on the debt of \$434.14.

Natasha Szeto  
Member of the Employment Relations Authority

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<sup>4</sup> Practice Direction of the Authority Te Ratonga Ahumana Taimahi at: <https://www.era.govt.nz/assets/Uploads/practice-direction-of-era.pdf>