



# New Zealand Employment Relations Authority Decisions

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## Domingo v Suon (Auckland) [2016] NZERA 302; [2016] NZERA Auckland 244 (20 July 2016)

Last Updated: 29 November 2016

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2016] NZERA Auckland 244  
5634176

BETWEEN JOSUE DOMINGO Applicant

AND MENG SUON and NGAN HENG trading as TOWN & COUNTRY FOODS Respondent

Member of Authority: Andrew Dallas

Representatives: Nathan Santesso, Advocate for the Applicant

Michael Mayrick, Counsel for the Respondent

Investigation meeting On the papers

Determination: 20 July 2016

DETERMINATION OF THE AUTHORITY

**A. Meng Suon and Ngan Heng trading as Town and Country (Town and Country) must comply with the Authority's determination of 31 May**

**2016 on or before 20 August 2016.**

**B. Town and Country must pay 5% interest on the outstanding amounts owed to Mr Domingo from the date they were required to be paid by the Authority, being 28 days from 31 May 2016, until the date they are paid.**

**C. Town and Country must also pay Mr Domingo \$71.56 as reimbursement of the Authority's filing fee on or before 20 August 2016**

**Employment Relations Problem**

[1] In *Josue Domingo v Meng Suon and Ngan Heng trading as Town and Country*

*Foods*1 (the determination), the Authority made various findings and orders.

[2] Town and Country was required to pay Mr Domingo within 28 days of the determination the following amounts:

- (i) \$2,464.00 gross in unpaid wages;
- (ii) \$2,560.40 gross in unpaid holiday pay;
- (iii) \$1,920.00 gross unpaid public holiday pay;

(iv) \$1,000.00 as penalties for breaching his employment agreement; and

(v) \$71.56 being the Authority's filing fee.

[3] Town and Country did not challenge the Authority's determination to the Employment Court.

[4] Mr Domingo lodged a statement of problem on 6 July 2016 seeking compliance with the Authority's determination. He has also sought interest, costs and reimbursement of his filing fee.

[5] Town and Country did not lodge a statement in reply. However, Counsel for Town and Country lodged a memorandum on 15 July 2016 opposing, on various grounds, the grant of the compliance order sought by Mr Domingo.

[6] I determined the matter under s 174D(1) of the Employment Relations Act 2000 (the Act).

### **The respective positions of the parties**

#### *Mr Domingo*

[7] Advocate for Mr Domingo submitted that Town and Country had not complied with the determination by failure to pay any or all of the amounts ordered by the Authority.

[8] Advocate for Mr Domingo said he had sought to make contact with Counsel for Town and Country but had not received a reply.

1 [\[2016\] NZERA 170](#)

#### *Town and Country*

[9] Counsel for Town and Country took issue with Mr Domingo lodging a statement of problem with the Authority for a compliance order because he argued that an application for enforcement of an Authority determination is not an "employment relationship problem".

[10] Section 5 of the Act defines an "employment relationship problem" as:

... include[ing] a personal grievance, a dispute, and any other problem relating to or arising out of an employment relationship, but does not include any problem with the fixing of new terms and conditions of employment.

[11] Counsel submitted "[n]othing in the statement of problem [lodged] by Mr Domingo alleges a personal grievance or a problem arising out of the employment relationship".

[12] Counsel for Town and Country further submitted that "a legal set off gives [Town and Country] a defence against enforcement of the [Authority] order".

[13] Counsel submitted that the basis of this set off was the "free board" offered and accepted by Mr Domingo during his employment with Town and Country.

[14] Counsel further submitted that the Authority did not have jurisdiction to determinate the set off.

### **Discussion**

[15] In my view, Mr Domingo's statement of problem does disclose a employment relationship problem "relating to ... an employment relationship", which is non-compliance with a determination of the Authority.

[16] In any event, as a matter of practice and procedure all proceedings, including compliance proceedings, are commenced in the Authority by way of statement of

problem.<sup>2</sup>

<sup>2</sup>Employment Relations Act, s 158 and "Form 1", Sch 1 of the Employment Relations Authority Regulations 2000.

[17] Town and Country did not seek a set off, or advance a counterclaim including a set off, against Mr Domingo's claims in its statement in reply lodged with the Authority on 17 September 2014.

[18] The only references to board or accommodation in the statement in reply were:

6. ... [Mr Domingo] could not afford rent accommodation. So he stayed with me.

20. [Mr Domingo] is well aware of the arrangement we had about his board, furnishings and meals. I am surprised he has mentioned this.

[19] Town and Country did not lodge an amended statement in reply after Mr

Domingo lodged an amended statement of problem on 30 November 2015.

[20] In her written evidence Ngan Heng of Town and Country stated in relation to board or accommodation:

6. [Mr Domingo] was provided with adequate accommodation and was also provided with meals.

[21] The issue of board and food was dealt with in the Authority's determination as

follows:

[18] ... during the investigation meeting Ms Heng stated that Mr Domingo did perform extra cleaning duties on a daily basis in the afternoon. She said this was half an hour per day. She appeared to claim this work was undertaken to set off the costs of Mr Domingo's food and board.

[19] Section 7 of [Wages Protection Act 1983](#) provides that wages must be paid in money. There was no evidence of a service tenancy and Mr Domingo's employment agreement did not deal with these matters. There was also no evidence the parties had reached agreement about the value of the food and board, how this amount would be added to Mr Domingo's gross wages and what appropriate deduction would be made for it.

[20] I find, based on Ms Heng's evidence, that Mr Domingo worked an extra half hour per day undertaking cleaning duties. He should have received remuneration in the form of wages for this. Mr Domingo is owed unpaid wages.

### **Compliance Order**

[22] It is appropriate to make a compliance order in the circumstance of this case. Town and Country must comply with the Authority's determination of 31 May 2016 on or before 20 August 2016.

[23] Failure by Town and Country to comply with this compliance order may result in Mr Domingo applying to the Employment Court to exercise its powers under s

140(6) of the Act. Remedies can include an order that the person in default be sentenced to imprisonment for a term not exceeding three months and/or a fine not exceeding \$40,000.

### **Claim for interest**

[24] The Authority has the power to award interest pursuant to cl 11 of the Second Sch of the Act at the rate prescribed under s 87(3) of the [Judicature Act 1908](#), which is currently 5% per annum.

[25] I consider that it is appropriate that Town and Country pay interest on the outstanding amounts owed to Mr Domingo.

[26] Town and Country must pay interest of 5% on the outstanding amounts owed to Mr Domingo from the date they were required to be paid by the Authority, being 28 days from 31 May 2016, until the date they are paid.

### **Costs**

[27] Mr Domingo sought costs in an unspecified amount. I decline to award costs.

[28] Mr Domingo sought reimbursement of the Authority's filing fee of \$71.56. This is fair and reasonable in all the circumstances. Town and Country must pay this amount to Mr Domingo on or before 20 August 2016.

Andrew Dallas

Member of the Employment Relations Authority