

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 278
3014793

BETWEEN VAIPOULI JEREMIAH
 EDMOND
 Applicant

A N D GOLDSTONE ALUMINIUM
 LIMITED
 Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Applicant in person
 No appearance for Respondent

Investigation Meeting: 13 September 2017 at Auckland

Oral Determination: 13 September 2017
Written Record: 13 September 2017

**ORAL DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

Non appearance by the respondent

[1] Goldstone Aluminium Limited (Goldstone) failed to file a statement in reply to the statement of problem, failed to engage with the Authority and failed to attend the investigation meeting today. Goldstone was served with the statement of problem and with the notice of investigation meeting but failed to seek the Authority's leave to respond and no reasons were provided for non-attendance¹.

[2] Mr Vaipouli Jeremiah Edmond asked for wages and time records from Goldstone and asked Mr Wang to attend mediation. There was no response.

[3] At the date of the investigation meeting and the date of this determination, Goldstone remained a registered company. Its registered office, at an address at 158 Bush Road, Rosedale, Auckland, 0632 remained unchanged from when Mr Edmond filed his application. In those circumstances the Authority proceeded to investigate and determine Mr Edmond's claims of unjustified dismissal and failures to pay him wages, holiday pay and statutory holidays.

Investigation Meeting

[4] As permitted by s.174E of the ERA, this determination has not set out all the evidence received. The determination states findings and relevant facts and legal issues and makes conclusions in order to efficiently dispose of the matters.

[5] For the Authority's investigation, Mr Edmond and his sister in law Ms Tessa Lee-Guard gave oral evidence. They both swore on oath that their evidence was true and correct.

Employment relationship problem

[6] The applicant, Mr Vaipouli Jeremiah Edmond, was employed by Goldstone in its warehouse in Rosedale, glazing aluminium windows, delivering the windows and as a truck driver.

[7] Mr Edmond was employed from 10 October 2016 until the termination of his employment on 9 May 2017. Mr Edmond says his dismissal was unjustified.

[8] Goldstone is a limited liability company and the licensee of Nulook aluminium windows in North Harbour, Auckland. Mr Roy Wang is the owner and manager of Goldstone.

[9] Mr Edmond says prior to his employment by Goldstone, he was working for the company Labour Hire, but wished to obtain a permanent position in order to support his partner and their baby.

[10] Mr Edmond was told about the job at Goldstone by a friend of his who was working there. Mr Edmond met with Mr Wang on 10 October 2016. Mr Edmond asked Mr Wang for an employment agreement but was told he did not need one.

¹ Employment Relations Act 2000, Schedule 2, clause 12

[11] Mr Edmond was asked by Mr Wang to begin work in the warehouse where the aluminium windows were manufactured. Mr Edmond began immediately. His job was to glaze aluminium windows and for most of the rest of his employment he worked delivering the aluminium windows to construction sites throughout Auckland. Mr Edmond also drove the truck.

[12] Mr Edmond says that he was never asked whether he had a truck driver's licence until approximately five months after he had begun employment at Goldstone. At a work barbeque, Mr Wang asked Mr Edmond if he had a truck driver's licence and he said no. Nothing changed. Mr Edmond continued driving the truck as required and delivering aluminium windows for Goldstone. Mr Edmond was paid the minimum wage by Goldstone for hours worked, which were on average, 50 per week.

Dismissal

[13] On 9 May 2017, Mr Edmond was on his way to work when he received a text from Mr Wang saying: "Since you don't have your truck driver's licence there is no longer any work for you going forward."

[14] Mr Edmond says when he received the text he was shocked and devastated. He is a young father with a daughter who is now almost two years old. He and his partner had recently obtained rented accommodation in Auckland and he was very concerned about whether he would be able to pay the rent and bills. Mr Edmond rang his sister in law, Ms Lee-Guard in distress. Ms Lee-Guard said Mr Edmond was very very upset.

[15] Mr Edmond provided evidence of loans for furniture which he defaulted on following his dismissal, as a result of having no income.

Remedies

[16] Mr Edmond is a vulnerable employee, with a partner and young child to support. Mr Edmond had no notice that he may be dismissed and there was no reason for his dismissal. He had worked hard for Goldstone for almost 8 months.

[17] The manner of dismissal I consider was callous and certainly not the action of a fair and reasonable employer as required by s.103A of the Employment Relations

Act 2000 (the Act). I consider in the circumstances \$10,000 compensation under s123(1)(c)(i) of the Act to be appropriate.

[18] I order Goldstone to pay Mr Edmond the sum of \$10,000 compensation within 21 days of the date of this determination.

Reimbursement of lost income

[19] Mr Edmond says he immediately tried looking for other jobs and applied for three or four, unsuccessfully. There was one job which was a possibility but as Mr Edmond was not provided with an employment agreement he was not able to work there. Mr Edmond finally obtained a job at Heat Treatment Limited through his brother. This was toward the end of July 2017, when Mr Edmond had been out of work for two months. Mr Edmond worked an average of 50 hours a week at the minimum wage of \$15.25 gross. Mr Edmond is entitled to reimbursement for lost remuneration under the Act². Mr Edmond was out of work for approximately eight weeks which amounts to \$6,100 gross.

[20] Goldstone is ordered to pay Mr Edmond the sum of \$6,100 within 21 days of the date of this determination.

Wages owing

[21] Mr Edmond provided the Authority with his IRD records and payslips, and up until the date of his termination by Goldstone. Mr Edmond earned \$19,559 gross while at Goldstone.

[22] Mr Edmond was not paid for the 8 day period leading up to his dismissal, nor was he paid notice of termination, annual leave or for public holidays when he was dismissed.

[23] Mr Edmond is entitled to payment of the six days for which he worked but was not paid from 1 May to 8 May 2017. This amounts to \$732.00 gross. Goldstone is ordered to pay Mr Edmond the sum of \$732.00 gross within 21 days of the date of this determination.

² Section 128(2) of the Act

Holiday pay

[24] Mr Edmond is entitled to nine public holidays which fell during the course of his employment, including Christmas day and Boxing day 2016, New Year's day and 2 January 2017, Auckland anniversary day, Waitangi day, Good Friday, Easter Monday and ANZAC day. I have calculated these days at the rate of eight hours a day at \$15.25 an hour. This amounts to \$1,098 gross

[25] Goldstone is ordered to pay Mr Edmond the sum of \$1098.00 gross within 21 days of the date of this determination.

Annual leave

[26] Mr Edmond was not paid out his annual leave. Under the Holidays Act 2003, Mr Edmond is entitled to annual leave calculated at the rate of 8% of his gross earnings of \$19,559. This amounts to \$1,564.72 gross.

[27] I order Goldstone to pay Mr Edmond the sum of \$1,564.72 gross within 21 days of the date of this determination.

Costs

[28] As Mr Edmond was not represented, he is not entitled to a contribution towards his costs. However, he is entitled to reimbursement of the application fee, amounting to \$71.56.

[29] For clarity, I order all of the above amounts to be paid by Goldstone to Mr Edmond within 21 days of the date of today's date.

Certificate of determination

[30] I direct that pursuant to Regulation 26 of the Employment Relations Authority Regulations 2000, Mr Edmond be provided with a Certificate of Determination, sealed with the seal of the Authority, recording respectively that Goldstone is ordered within 21 days of the date of this determination to pay Mr Edmond the sum of \$9,494.72 gross in wage and holiday pay arrears, \$10,000 without deduction being distress compensation and the filing fee of \$71.56.

Anna Fitzgibbon
Member of the Employment Relations Authority