

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2019] NZERA 220
3048013

BETWEEN

LOUIS ESTHER
Applicant

AND

DAC EDUCATIONAL
SERVICES LIMITED
Respondent

Member of Authority: Robin Arthur

Representatives: Applicant in person
Edward Ludbrook, director for the Respondent

Investigation Meeting: 12 April 2019

Determination: 12 April 2019

DETERMINATION OF THE AUTHORITY

- A. By no later than 28 days after the date of issue of this determination DAC Educational Services Limited must pay Louis Esther the following sums:**
- (i) \$7,539.26 (net) as arrears of wages and holiday pay; and**
 - (ii) \$102.30 as interest on those amounts for the period from 16 November 2018 to 12 April 2019; and**
 - (iii) Interest on the sum of \$7,539.26 from 13 April 2019 to the date of payment; and**
 - (iv) \$71.56 in reimbursement of the Authority filing fee.**

Employment Relationship Problem

[1] Louis Esther sought orders for payment of wage arrears and holiday pay from his former employer DAC Educational Services Limited, a krypto-currency business trading as DAXCI.

[2] On 18 October 2018 DAXCI chief executive officer and company director Ed Ludbrook notified Mr Esther that his position was disestablished. By letter Mr Esther was given four weeks' notice of the termination of his employment on the grounds of redundancy. The letter said Mr Esther would "be paid as normal for the duration of [the] notice period" and would be required to work out his notice period.

[3] Mr Esther's application to the Authority said he was not paid for the remainder of his employment. Initially DAXCI, in its statement in reply, disputed the amount of Mr Esther's claim. At the Authority investigation meeting however Mr Ludbrook accepted Mr Esther was due wages and holiday pay. Mr Esther accepted DAXCI's calculation of net amount for those arrears as totalling \$7,539.26.

[4] Mr Ludbrook said the company was not presently able to pay that amount but referred to prospects that the international business of which it was a part may improve. While there may not be an immediate ability to pay, orders made now to confirm the liability to those arrears and require their payment meant Mr Esther could enforce such orders when fortunes allowed.

[5] Following discussion with them Mr Esther and Mr Ludbrook agreed the Authority would issue a determination for the arrears, with an order for interest.

[6] If the amount is not paid within the required period, Mr Esther would then have to consider pursuing enforcement measures. These include the civil debt procedures available in the District Court. An order of the Authority for payment of arrears of wages and holiday pay may be filed in the District Court and is then enforceable in the same manner as an order of the court.¹ Alternatively, if it were not able to pay its debts, proceedings could be initiated to liquidate the company.²

Order for interest

[7] In any matter involving the recovery of money, such as arrears of wages and holiday pay, the Authority may order interest to be paid on the sum for which a determination is given. The interest may be on the whole or part of the money for the whole or part of the period between when the money was due to be paid and the date of payment ordered by the Authority.³

¹ Employment Relations Act 2000, s 141.

² Companies Act 2003, s 241.

³ Employment Relations Act 2000 Schedule 2 clause 11.

[8] Exercising this power I considered it fit to order interest on the total amount of \$7,539.26 of wages and holiday pay found due to Mr Esther from 16 November 2018 to the date of issue of this determination. He has been deprived of the use of money that he should have had complete use of by the end of his notice period on 15 November 2018. Calculated using the civil debt online interest calculator, the amount of interest DAXCI must pay Mr Esther for that period is \$102.30.

[9] DAXCI must also pay interest for the period from 13 April 2019 to the date on which payment in full of the amounts due to Mr Esther are made. The calculation is to be made by using the using the civil debt online interest calculator.⁴

Costs

[10] Mr Esther represented himself in pursuing his arrears claim so no legal costs were incurred. DAXCI must reimburse him for the expense of the \$71.56 fee he paid to lodge his application in the Authority.

Robin Arthur
Member of the Employment Relations Authority

⁴ <https://www.justice.govt.nz/fines/civil-debt-interest-calculator/>