

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 397
5598122

BETWEEN TAO (EDWIN) GU
Applicant
A N D UTEL TELECOM GROUP
LIMITED
Respondent

Member of Authority: Rachel Larmer
Representatives: Matthew McGoldrick, Counsel for the Applicant
No Appearance for the Respondent
Investigation Meeting: 16 December 2015 at Auckland
Written Record of Oral Determination: 16 December 2015

**WRITTEN RECORD OF ORAL DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

Employment relationship problem

[1] Mr Gu succeeded in a number of claims he made against his former employer UTEL Telecom Group Limited (UTEL). In its substantive determination dated 29 October 2015¹ the Authority ordered UTEL within 28 days of the date of its determination to pay Mr Gu:

- (a) *Lost remuneration of \$10,769.23 under s.128(3) of the Act;*
- (b) *Distress compensation of \$8,000 under s.123(1)(c)(i) of the Act;*
- (c) *\$69 being reimbursement of his medical visit and associated parking charges;*
- (d) *\$1,518.50 salary arrears for failure to pay him the minimum wage rate from 28 October to 01 December 2014;*

¹ [2015] NZERA Auckland 335.

- (e) *Wage arrears of \$6,805.55 for failure to pay his salary in February, March and April 2015;*
- (f) *\$605 to reimburse him for UTEL's unlawful deduction from his wages;*
- (g) *Unpaid holiday pay of \$1,575.86²;*
- (h) *Interest to run from 11 April 2015 until these amounts have been paid in full at the current prescribed interest rate of 5% on Mr Gu's;*
 - a. *lost remuneration [96](a);*
 - b. *underpaid salary [96](d),*
 - c. *wage arrears [96](e);*
 - d. *unlawful deduction from his wages [96](f);*
 - e. *unpaid holiday pay [96](g);*
- (i) *\$3,500 towards Mr Gu's actual legal costs; and*
- (j) *\$71.56 to reimburse Mr Gu's filing fee.*

[2] Mr Gu says that UTEL has not paid anything. He now seeks a compliance order and interest.

[3] I am satisfied UTEL has been served with Mr Gu's Statement of Problem and with the Notice of Hearing. Mr Philip Ling advised the Authority in an email that he would not be attending the investigation meeting. UTEL did not attend the substantive investigation meeting either.

[4] Mr Ling in an email to the Authority says UTEL is "*having difficulties currently and in debts now* (sic)." UTEL did not comply with the Authority's direction to provide affidavit evidence setting out UTEL's financial position and in particular its ability (or inability as the case may be) to comply with the Authority's substantive determination.

[5] I therefore determine Mr Gu's compliance order application based on the information currently available.

[6] UTEL has taken no steps to meet its legal obligations to pay Mr Gu the amounts he has been awarded by the Authority. I am satisfied on the balance of probabilities that without a compliance order UTEL is unlikely to voluntarily pay Mr Gu what he is owed.

[7] I therefore consider it is in the interests of justice to order UTEL to comply with the Authority's substantive determination dated 29 October 2015 by paying Mr Gu (in full) the amounts he was awarded in paragraph 108 of that determination³ within 28 days of this determination.

[8] I also consider it appropriate to exercise the Authority's discretion to award Mr Gu interest. He has been deprived of the use of money which should have been paid to him so it is not equitable for him to bear that cost alone.

[9] UTEL was ordered in paragraph 108(h) to pay interest on the 5 items set out in that paragraph with interest to run from 11 April 2015 until those amounts were paid in full.

[10] In addition to that UTEL is now ordered to pay Mr Gu interest under the Judicature Act 1908 at the current prescribed rate of 5% on the amounts set out in the following substantive determination⁴ paragraphs numbered;

- a. 108(b) – distress compensation of \$8,000;
- b. 108(c) - \$69 reimbursement of medical costs;
- c. 103(i) - \$3,500 legal costs;
- d. 108(j) - \$71.56 filing fee.

[11] Interest on the amounts specified at paragraph [10] above is to run from 30 October 2015 (being the date after the substantive determination) until these amounts have been paid in full.

³ Supra.

⁴ Ibid 1.

[12] UTEL is also ordered within 28 days of the date of this determination to pay Mr Gu \$500 towards the costs associated with his compliance order application plus \$71.56 to reimburse his filing fee.

Rachel Larmer
Member of the Employment Relations Authority