

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 439
5414772 / 5428584

BETWEEN CHAUNTE HEPI
 Applicant

A N D TRAFFIC MANAGEMENT
 NZ LIMITED
 Respondent

Member of Authority: T G Tetitaha

Representatives: S Scott, Counsel for Applicant
 R Drake, Advocate for Respondent

Investigation Meeting: 24 September 2013 at Hamilton

Submissions Received: 23 September 2013 from Applicant
 23 September 2013 from Respondent

Oral Determination given: 24 September 2013

Date of Written
Determination: 25 September 2013

DETERMINATION OF THE AUTHORITY

Orders

- A. Traffic Management Limited shall pay \$3,915.55 to Chaunte Hepi pursuant to s11 Wage Protection Act 1983. Interest shall accrue upon this sum at the rate of 7% per annum from 9 October 2012 until the date of payment.**
- B. Traffic Management Limited shall pay a penalty of \$1,000 to Chaunte Hepi pursuant to s 13(b) of the Wages Protection Act 1983 and s 135 and 136(2) Employment Relations Act 2000**

Employment relationship problem

[1] Chaunte Hepi was employed for 7½ years more lately as the Site Traffic Management Supervisor by Traffic Management NZ Limited (Traffic Management).

She resigned following an accident where she fell asleep while driving causing an accident and damage to a truck. She later tested positive for cannabis. Ms Hepi seeks to recover \$3,915.55 she claims was illegally deducted from her final wage on 9 October 2012 by Traffic Management without her written consent.

[2] Traffic Management denies their actions were illegal. It submits Ms Hepi orally agreed to the deduction at a disciplinary meeting on 5 October 2012 when she resigned. This agreement is recorded in the written minutes of the meeting. They also submit she consented in writing to deductions through her employment agreement and applicable policies. Alternatively, they submit the deduction should set off against her acknowledged debt arising from damage to the truck.

Issues

[3] The issues for the Authority to determine are:

- (a) Did Ms Hepi give written consent to Traffic Management deducting \$3,915.55 from her wages in accordance with the Wage Protection Act 1983?
- (b) If not, should a penalty be imposed and if so, how much?
- (c) Is there a proven liquidated debt owed by Ms Hepi to Traffic Management that should be set off against the above payments?

Did Ms Hepi give written consent to Traffic Management deducting \$3,915.55 from her wages in accordance with the Wage Protection Act 1983?

[4] Ms Hepi submits she did not give written consent at the 5 October 2012 meeting to deduct the full amount of damages from her wages. She expected further information including a copy of the invoice and discussion about the method of payment. This did not occur. She did not sign her employment agreement and did not recall the motor vehicle policy, both of which allegedly allowed for deductions from her wages for damages.

[5] Traffic Management submits it understood she had agreed to payment from her wages at the meeting or through her individual employment agreement. It only had to advise how much was to be deducted at a later date.

[6] The Wage Protection Act 1983 prohibits any deductions from employee wages that have not been requested or authorised in writing, whether the deductions appear justifiable or not.¹

[7] There is no evidence Ms Hepi gave her consent in writing to Traffic Management to determine the amount of her debt and to deduct it from her wages. Ms Hepi had a different view of the meeting. She believed there would be on-going discussions. She wanted to be told the amount, given a copy of the invoice to check, and discuss further time to pay. An acknowledgement of debt is insufficient to constitute written consent.²

[8] The individual employment agreement does not evidence written consent to what Traffic Management did. It was not signed by Ms Hepi, although she acknowledges receiving but not reading it. It attaches a motor vehicle policy which sets out a process for debt recovery for damage caused by a driver which is dealt with below. The agreement and policies do not evidence her written consent to the deduction of 93% of her wages.

[9] The deduction made by Traffic Management was prohibited by the Wage Protection Act 1983. Traffic Management Limited shall pay \$3,915.55 to Chaunte Hepi pursuant to s11 Wage Protection Act 1983. Interest shall accrue upon this sum at the rate of 7% per annum from 9 October 2012 until the date of payment.

If not, should a penalty be imposed and if so, how much?

[10] As indicated to the parties during the hearing, any penalty imposed would be low. A penalty of \$1,000 shall be paid to Ms Hepi to mitigate the losses and hardship suffered prior to obtaining financial assistance.

Is there a proven liquidated debt owed by Ms Hepi to Traffic Management that should be set off against the above payments?

[11] The parties do not dispute the accident occurred and Ms Hepi was at fault. Traffic Management has produced an invoice for the work. It does not detail what

¹ *Amaltal Fishing Company Limited v Morunga* [2002] 1 ERNZ 692; see also ss 4- 5, 12 Wage Protection Act 1983

² *Rahlts v Criterion Papers NZ Limited*, EmpC Auckland AT227A/92, 9 December 1992.

work has been undertaken and there is no corroborating evidence of the reasonableness of the charges.

[12] However, during cross-examination it was revealed Traffic Management had not made any insurance claim for the accident. Its motor vehicle policy states where a driver is at fault, Traffic Management may require the employee to meet the insurance excess.³ It is only where insurance is declined because, for example, a driver was driving under the influence of drugs or alcohol, that Traffic Management may claim insurance and authorise the insurer to recover costs from the driver.⁴

[13] Traffic Management asserted the insurance claim would be inevitably declined. Irrespective, its motor vehicle policy required it to make the insurance claim prior to seeking damages against Ms Hepi. This is the method for liquidating the debt owed by Ms Hepi to Traffic Management.

[14] Traffic Management is prevented from bringing a counterclaim against Ms Hepi, until an insurance claim has been made and either accepted or declined.

[15] Accordingly, the counterclaim is dismissed.

T G Tetitaha
Member of the Employment Relations Authority

³ Motor Vehicle Policy, p2, attachment to the statement of problem (Traffic Management NZ Limited) dated 5 August 2013.

⁴ Motor Vehicle Policy, p3, attachment to the statement of problem (Traffic Management NZ Limited) dated 5 August 2013.