

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 315
3013156

BETWEEN UNG HIEP
 Applicant

A N D ICON CONCEPTS 2012
 LIMITED
 Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Applicant in person
 No appearance for Respondent

Investigation Meeting: 10 October 2017 at Auckland

Date of Determination: Oral Determination 10 October 2017
 Written record 10 October 2017

**ORAL DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

Non-appearance by the Respondent

[1] Icon Concepts 2012 Limited (“Icon”) 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. Icon 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-attendance.¹

[2] At the date of the investigation and the date of this determination, Icon remained a registered company. Its registered office, at an address at

¹ Employment Relations Act 2000, Schedule 2, Clause 12.

283A Keka Road, Mission Bay, Auckland, 1071 remained unchanged from when the applicant, Mr Ung Hiep filed his application. In those circumstances the Authority proceeded to investigate and determine Mr Hiep's claims of failures to pay him the minimum wage, holiday pay and bereavement leave.

Investigation meeting

[3] As permitted by s.174E of the Employment Relations Act 2000 (the Act), 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.

[4] For the Authority's investigation, Mr Hiep gave oral evidence. The Authority was assisted by an interpreter proficient in the Cambodian language.

Employment relationship problem

Icon Concepts 2012 Limited

[5] Icon is a registered company which was incorporated in New Zealand on 22 November 2012. Mr Masla Mani is the sole director and shareholder of Icon.

[6] Icon is in the business of purchasing second hand household appliances from LG Electronics in New Zealand. Once purchased, Icon repairs and sells the appliances.

Mr Hiep's employment by Icon

[7] Mr Hiep was employed by Icon as a licensed brown goods technician on 18 February 2014 until his resignation on 28 November 2016. Mr Hiep's job was to repair the second hand household appliances. Mr Hiep was employed pursuant to a written individual employment agreement signed by both Mr Mani and Mr Hiep on 18 February 2014.

Mr Hiep's claims against Icon

[8] Mr Hiep says during his employment by Icon he was not paid the minimum wage, was not paid bereavement leave when his mother died in June 2016 and was not paid holiday pay owing when his employment finished. Mr Hiep says he has

tried to obtain his pay slips from Icon and has requested the monies owing to him but there has been no engagement by Icon.

[9] Under clause 7.1 of the employment agreement, Mr Hiep's hourly rate has been handwritten as \$14 an hour. Mr Hiep says he worked 40 hours a week and was paid \$14 an hour gross. Clause 8.1 of the employment agreement provides for paid annual leave of 4 weeks a year and clause 8.5 allows for up to 3 days paid bereavement leave in the event of the death of a parent.

Minimum Wage Act 1983

[10] Mr Hiep was paid \$14 an hour gross for the period of his employment. The minimum hourly rate of pay for adult workers for the period 1 April 2014 to 31 March 2015 was \$14.25 gross an hour. The minimum hourly rate of pay for adult workers for the period 1 April 2015 to 31 March 2016 was \$14.75 gross an hour. The minimum hourly rate of pay for adult workers for the period 1 April 2016 to 31 March 2017 was \$15.25 gross an hour.

[11] Mr Hiep worked a total of 2080 hours for his first year of employment, 1 April 2014 to 31 March 2015. He is owed 0.25c an hour gross. This amounts to \$520 gross.

[12] Mr Hiep worked a total of 2080 hours for his second year of employment, 1 April 2015 to 31 March 2016. He is owed 0.75c an hour gross. This amounts to \$1560 gross.

[13] Mr Hiep worked a total of 1280 hours for his final 8 months of employment, 1 April 2016 to 28 November 2016. He is owed \$1.25c an hour gross. This amounts to \$1600 gross.

[14] In total, Icon owes Mr Hiep the sum of \$3680 gross being the underpayment of the minimum wage during the period of his employment.

[15] I order Icon to pay Mr Hiep the sum of \$3680 gross within 21 days of the date of this determination.

Holiday pay

[16] Mr Hiep says during his two and a half years of employment, he took 4 weeks holiday. When Mr Hiep resigned, he did not receive holiday pay owing to him.

[17] According to the Inland Revenue records which have been provided by Mr Hiep, in his first year of employment from 1 April 2014 to 31 March 2015, he earned \$28,000 gross. In the period from 1 April 2015 to 31 March 2016, he earned \$32,028 gross and in the year 1 April 2016 to 31 March 2017 he earned \$16,637.75 gross.

[18] Mr Hiep's income for the years he did not take holidays (2014-2015, 2016-2017) amounted to \$44,637.75. Mr Hiep is owed minimum wages totalling \$3680 gross. The total income for the purposes of calculating holiday pay amounts to \$48,317.75.

[19] Icon owes Mr Hiep holiday pay at the rate of 8% of the sum of \$48,317.75 gross. This amounts to \$3865 gross.

[20] Icon is ordered to pay Mr Hiep the sum of \$3865 gross being holiday pay within 21 days of the date of this determination.

Bereavement leave

[21] Mr Hiep was not paid bereavement leave when his mother died in June 2016. Mr Hiep is entitled to payment for the three days bereavement leave. This amounts to \$366 gross, being 3 days at 8 hours a day at the minimum hourly rate of \$15.25.

[22] Icon is ordered to pay Mr Hiep the sum of \$366 gross within 21 days of the date of this determination.

Costs

[23] As Mr Hiep 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.

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

Certificate of determination

[25] I direct that pursuant to regulation 26 of the Employment Relations Authority Regulations 2000, Mr Hiep be provided with a certificate of determination sealed with the seal of the Authority, recording respectively that Icon was ordered within 21 days

of the date of this determination to pay Mr Hiep the sum of \$3680 gross being the underpayment of the minimum wage, \$3865 gross in holiday pay arrears, \$366 gross for unpaid bereavement leave and the filing fee of \$71.56.

Anna Fitzgibbon
Member of the Employment Relations Authority