



# New Zealand Employment Relations Authority Decisions

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## Henare v Ellison (Auckland) [2017] NZERA 376; [2017] NZERA Auckland 376 (6 December 2017)

Last Updated: 15 March 2018

### IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2017] NZERA Auckland 376  
3019231

BETWEEN	KOHI HENARE Applicant
AND	ANDRE ELLISON First Respondent

Member of Authority: Vicki Campbell

Representatives: Applicant in person

No appearance for Respondent Investigation Meeting: 6 December 2017

Oral Determination: 6 December 2017

Record of Oral Determination:

6 December 2017

### RECORD OF ORAL DETERMINATION OF THE AUTHORITY

A. Mr Andre Ellison is ordered to pay to Mr Henare a total of \$9,775.56 under [section 131](#) of the [Employment Relations Act 2000](#) within 14 days of the date of this determination.

B. Mr Andre Ellison is ordered to pay to Mr Henare the sum of \$71.56 within 14 days of the date of this determination.

C. Mr Henare is to be provided with a certificate of determination under regulation 26 of the [Employment Relations Authority Regulations 2000](#).

### Procedural background

[1] Mr Henare lodged his statement of problem with the Authority on 6 September 2017. He claims he is owed arrears of wages and other monies for work he carried out for Mr Ellison.

[2] The statement of problem was served on Mr Andre Ellison's address and signed for by Earnest Ellison at 3.24 pm on 26 September 2017. No statement in reply has been received from Mr Ellison.

[3] By way of Notice of Direction served on Mr Ellison on 28 November 2017 Mr Ellison was advised that in the absence of a statement in reply he would require the leave of the Authority to reply or respond to the application under Regulation 8(3) of the [Employment Relations Authority Regulations 2000](#).

[4] I have noted that Mr Ellison is the sole director and shareholder of a company registered as Ellison Rigging Limited. The address for service for the company is the same address the Authority has recorded as being the service address for Mr Ellison personally.

[5] The Notice of Investigation Meeting was served on Mr Ellison's address on 28 November 2017. Mr Ellison has not engaged in the Authority's process and as provided in clause 12 of schedule 2 of the [Employment Relations Act 2000](#) (the Act) I have proceeded to act fully in the matter as if the respondent had engaged.

### Employment relationship problem

[6] Mr Ellison asked Mr Henare to operate a crane for him in Kaikoura. No written employment agreement was provided to Mr Henare. Mr Henare agreed to do the work and left home from Wellsford on 3 June 2017 and arrived in Kaikoura on 5 June. He started work on 6 June at 7 am and stopped working at 5.30 pm on 24 June because Mr Ellison had failed to pay him for his work.

[7] Despite assurances from Mr Ellison that Mr Henare would be paid, no payments have been made.

### Issue

[8] In order to resolve Mr Henare's employment relationship problem I must determine the following questions:

- a. Is Mr Henare owed any wages and if so how much?
- b. Is Mr Henare entitled to reimbursement of expenses and a daily living allowance and if so how much?

[9] As permitted by [s 174E](#) of the Act this determination has not recorded all the evidence and submissions received from Mr Henare but has stated findings of fact, expressed conclusions on issues necessary to dispose of the matter and specified orders made as a result.

### Arrears of wages and other monies owed

[10] Mr Henare stopped working for Mr Ellison on 24 June because he had not been paid. He tried to phone and text Mr Ellison but did not get any response until 2 August when Mr Ellison text Mr Henare and advised him the wages would be paid in full the following Friday (7 August). Payment was not made.

[11] Mr Henare claims arrears of wages and other monies owed under [section 131](#) of the Act.

### Wages

[12] Mr Henare claims outstanding wages as payment for work carried out from 5 – 16 June inclusive and then from 19 – 24 June inclusive.

[13] Timesheets completed by Mr Henare at the time show he worked the

following hours:

Date(s)	Hours worked	Total claimed
5 June	8 hours (public holiday not worked)	8
6-11 June inclusive	10 hours each day	60
12 June	10.5 hours	10.5
13 and 14 June	11.5 hours each day	23
15 June	10.5	10.5
16 June	9.5	9.5
19 – 24 June	10 hours each day	60
<b>Total Hours claimed</b>		<b>181.5</b>

[14] Mr Henare was offered and accepted payment of his hours of work at the rate of \$40 per hour. In the absence of any evidence to the contrary Mr Henare has established to my satisfaction that he is owed a total of \$7,260 in outstanding wages.

### Other monies owed

[15] Mr Henare is claiming for expenses he incurred in travelling from Wellsford to Kaikoura including accommodation costs and payment of a daily living allowance of \$80 per day as other monies owed to him under [section 131](#) of the Act.

#### Reimbursement of expenses

[16] Mr Henare told me he and Mr Ellison agreed that Mr Ellison would reimburse him for his expenses in travelling from Wellsford to Kaikoura. The list of expenses Mr Henare says he has incurred and need to be reimbursed are:

<b>Type of Expense</b>	<b>Date incurred</b>	<b>Total claimed</b>
Motel – Tokoroa	3 June	\$125
Petrol – Tokoroa	3 June	\$118.01
Ferry crossing	4 June	237.20
Motel Murchison	4 June	\$125
Petrol – Blenheim	4 June	\$105.35
Motel – Kaikora	5 June	\$125
<b>Total Expenses</b>		<b>\$835.56</b>

[17] In the absence of any evidence to the contrary Mr Henare has established to my satisfaction that he is owed a total of \$835.56 in expenses reasonably incurred and for which he should be reimbursed.

#### Living away allowance

[18] Mr Henare told me it is usual when working away from home where suitable accommodation was not provided to be paid a living away allowance. Mr Ellison was aware Mr Henare was travelling with his wife. They therefore required married man's quarters. The only accommodation available was single man's quarters which were not suitable. Mr Henare was aware that Mr Ellison received payment from the contractor for a living allowance for Mr Henare in the amount of \$80 per day.

[19] Mr Henare claims the payment of \$80 per day for the 21 days of his employment with Mr Ellison. In the absence of any evidence to the contrary Mr Henare has established to my satisfaction that he is owed a total of \$1,680 as a living away allowance.

#### **Conclusion**

[20] Mr Andre Ellison is ordered to pay to Mr Henare a total of \$9,775.56 under [section 131](#) being arrears of wages or other monies owed to Mr Henare. Payment must be made within 14 days of the date of this determination.

#### **Costs**

[21] Mr Henare is entitled to be reimbursed the filing fee for this application.

[22] Mr Andre Ellison is ordered to pay to Mr Henare the sum of \$71.56 within 14 days of the date of this determination.

#### **Certificate of determination**

[23] Pursuant to Regulation 26 of the [Employment Relations Authority Regulations 2000](#) Mr Henare is to be provided with a certificate of determination, sealed with the seal of the Authority recording that within 14 days of the date of this determination, Mr Ellison is to pay Mr Henare:

- \$9,775.56 gross under [s 131](#) of the [Employment Relations Act](#); and
- \$71.56 for costs.

Vicki Campbell

Member of the Employment Relations Authority