

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2019] NZERA 147
3049152

BETWEEN OLIVER HOFSTETTER
Applicant

AND META & WOODWARD
LIMITED
Respondent

Member of Authority: Robin Arthur

Representatives: Applicant in person
 No appearance or attendance for the Respondent

Investigation Meeting: 11 March 2019 by telephone conference

Determination: 12 March 2019

DETERMINATION OF THE AUTHORITY

- A. Within 28 days of the date of this determination Meta & Woodward Limited must pay Oliver Hofstetter the following sums:**
- (i) \$15,872 as arrears of wages; and**
 - (ii) \$1,269.76 as holiday pay due on those wage arrears;**
 - (iii) \$186.51 as interest on the amounts due under (i) and (ii) for the period from 13 November 2018 to the date of this determination and also a further sum as interest (to be calculated on the Civil Debt interest calculator) from that latter date to the date of payment in full; and**
 - (iv) \$71.56 in reimbursement of the fee he paid to lodge his application in the Authority.**

Employment Relationship Problem

[1] Oliver Hofstetter lodged an application in the Authority seeking an order for payment of wage arrears for a 13-week period from August to November 2018. He said he was not paid for his work as an electrician for Meta & Woodward Limited (MWL) over that time. When asked to quantify the amount of arrears claimed and to advise whether he had received any holiday pay, Mr Hofstetter calculated he was owed \$16,640 before tax. This comprised 13 weeks' wages, for 40 hours a week at his hourly rate of \$32. He said holiday pay was "never mentioned" by Richard Woodward, the director of MWL with whom Mr Hofstetter had worked. He said Mr Woodward had also not responded to his requests for time, wage and holiday records.

[2] MWL's statement in reply, in the form of an email from Mr Woodward, admitted Mr Hofstetter was owed "some wages". Mr Woodward said earlier communication from Mr Hofstetter claimed he was owed eight or nine weeks' wages, not the 13 weeks Mr Hofstetter had claimed in his application to the Authority. Mr Woodward said he believed Mr Hofstetter was "owed 5.5 weeks pay maximum" after taking account of \$350 cash Mr Woodward said he had paid Mr Hofstetter on 13 November 2018. Mr Woodward also said he was trying to recover some funds from his former business partner, was in the process of closing the business and criticised Mr Hofstetter for "taking complete advantage of this unfortunate situation".

The Authority's investigation

[3] The Authority's investigation of this matter has been conducted by email correspondence with the parties and by a telephone conference. Mr Hofstetter had meanwhile left New Zealand to travel overseas. Mr Woodward had only intermittently responded to emails. In a telephone call to an Authority Officer Mr Woodward said commitments in a training course he was attending at Police College made it difficult for him to respond. A Notice of Investigation Meeting for the afternoon of 11 March was issued and arrangements were made to interview Mr Hofstetter by WhatsApp, an audio-visual application. The Notice included its standard notes advising that the Authority may proceed if either party did not attend. Mr Woodward advised he was not likely to attend due to his training commitments. I was satisfied he had adequate notice and the opportunity to arrange to attend the call. He was also advised he could provide any further information or submissions in

writing in advance of the meeting. By the appointed time Mr Woodward had not provided any written submissions or advised that he would attend the call. The interview with Mr Hofstetter proceeded in Mr Woodward's absence.¹ Mr Hofstetter answered questions under affirmation confirming information he had previously provided and on which Mr Woodward already had the opportunity to comment on. No relevant new or additional information was gained from the interview that required a further opportunity for Mr Woodward to comment.²

[4] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

The issues

[5] The issues requiring investigation and determination were:

- (i) What was due to Mr Hofstetter as wage arrears – the smaller amount Mr Woodward said was due or the larger amount Mr Hofstetter claimed?
- (ii) Was any holiday pay due and if so what order should be made?
- (iii) Should interest be awarded?
- (iv) What arrangements should be made for payment of whatever amounts were ordered to be paid?

Wage arrears

[6] The period during which Mr Hofstetter said he was not paid for his work ran from 20 August to 13 November 2018. This comprised 65 working days. He said he had taken one day's sick leave and had not worked on another two of those 65 days because he was told there was no work available. He accepted his wage claim should be adjusted to the amount due for 62 days' work. At eight hours a day at his hourly rate of \$32 wages due for 62 days tallied \$15,872.

[7] In advance of the investigation meeting Mr Hofstetter provided evidence he had asked for time, wage and leave records. Mr Woodward had not responded to the request or provided any such records. In those circumstances the discretion under s

¹ Employment Relations Act 2000, s 160(1)(c) and s 173(2).

² Employment Relations Act 2000, s 173(3).

132(2) of the Act applied so the Authority could accept as proven all claims made by Mr Hofstetter in respect of wages paid and the hours, days and time worked by him.

[8] There was no evidence to support Mr Woodward's assertion that he paid \$350 cash to Mr Hofstetter for part of wages due to him. Mr Hofstetter denied receiving any such amount.

[9] Mr Hofstetter has established there was a default in payment owed to him by MWL totalling \$15,872 and an order for payment of that amount should be made.

Holiday pay

[10] Mr Hofstetter did not have a written employment agreement. He was entitled to the statutory provisions for holiday under the Holidays Act 2000. There was no evidence he received any paid holiday leave during his employment. There was no information about Mr Hofstetter's total earnings during his employment, on which a holiday pay award could be made, but holiday pay was certainly due on the wage arrears ordered. At eight per cent of the gross amount owed as wage arrears MWL must pay Mr Hofstetter an additional \$1,269.76 as holiday pay.³

Interest

[11] Mr Hofstetter lost the use of wages and holiday that was due to be paid to him by no later than 13 November 2018. The money due to him, as confirmed by this determination, was \$17,141.76. During the period from August to November, and subsequently, he had to borrow money from family and friends to pay for rent and other living costs.

[12] He was entitled to an award of \$186.51 interest on the sum due to him for the period from 13 November 2018 until the date of this determination. He is also entitled to interest from the day after the date of this determination until the date of payment. Calculation of that sum is to be made by using the online Civil Debt interest calculator for the relevant period.⁴

³ Holidays Act 2000 s 23(2).

⁴ www.justice.govt.nz/fines/civil-debt-interest-calculator.

Reimbursement of filing fee

[13] MWL must also reimburse Mr Hofstetter for the fee of \$71.56 he paid to lodge his application in the Authority.

Payment of amounts owing and enforcement

[14] The Authority may order the payment of arrears of wages or other money owed to an employee be made by instalments, but only if the financial position of the employer requires it.⁵

[15] Mr Woodward's email to the Authority of 15 February said MWL's business was in the process of "getting closed" and he was seeking to recover funds from his ex-business partner. He also referred to trying to get 50 per cent of his assets released from his business. That information indicated some financial difficulties but the prospect that there were assets to cover debts due to Mr Hofstetter. As a result there was insufficient evidence to establish that the financial position of the employer required an order for payment of the arrears and interest by instalments, if such an order had been sought.

[16] The orders for payment of money made in this determination may be enforced by being filed in the District Court and enforced there in the same manner as orders of the Court.⁶ If Mr Hofstetter finds the need to do so, he may request a Certificate of Determination be issued to him by the Authority for that purpose.

Robin Arthur
Member of the Employment Relations Authority

⁵ Employment Relations Act 2000, s 131(1A).

⁶ Employment Relations Act 2000, s 141.