

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2018] NZERA Auckland 227  
3022651

BETWEEN

BOBBY-JOE KELLY  
Applicant

AND

DELTA CIVIL LIMITED  
Respondent

Member of Authority: Nicola Craig  
Representatives: Applicant in person  
No appearance for the Respondent  
Investigation Meeting: 20 July 2018  
Date of Oral Determination: 20 July 2018  
Written Record Issued: 20 July 2018

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**ORAL DETERMINATION OF THE AUTHORITY**

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- A. Within 7 days of the date of this determination Delta Civil Limited is to pay Bobby-Joe Kelly the following sums:**
- (i) \$1350.00 gross in wage arrears;**
  - (ii) \$810.00 gross in holiday pay; and**
  - (iii) Interest on \$2160.00 (being both those sums) at the rate of 5% calculated from 11 August 2017 until the date of payment.**

- B. Delta Civil Limited is ordered to pay PAYE to the Inland Revenue Department for the wages which it has already paid him and the sums ordered to be paid under this determination. A copy of this determination is to be sent to the Inland Revenue Department.**
- C. Delta Civil Limited is ordered to pay Bobby-Joe Kelly the sum of \$71.56 being the filing fee, within 7 days of the date of this determination.**

### **Employment relationship problem**

[1] Bobby-Joe Kelly was employed for two months as a Site Traffic Management Supervisor by Delta Civil Limited (Delta Civil or the company) after an employment agreement was signed on 12 June 2017. Mr Kelly resigned on 8 August 2017.

[2] Mr Kelly had on-going difficulties getting his final pay from Delta Civil, apparently due to the company going through a change of ownership. The company was originally owned and directed by Teletelafi Faavae.<sup>1</sup> After Bobby-Joe Kelly's resignation, Ben Kelly became director and a shareholder.

[3] Mr Kelly claims that he is still owed wage arrears by Delta Civil, including wages for 45 hours and holiday pay. Delta Civil accepts that it employed Mr Kelly but initially denied in the statement in reply that any wages or holiday pay were outstanding.

[4] Mr Kelly attempted to participate in mediation with Delta Civil but on three occasions no company representative arrived at the mediation rooms at the times arranged by the Mediation Service.

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<sup>1</sup> Mr Teletelafi Faavae is sometimes referred to as Tele

## **The Authority's investigation**

[5] Delta Civil has some involvement in the Authority's process. Partway through the process Delta Civil instructed a barrister to represent it. However, Delta Civil then did not file documents or witness statements as directed by the Authority.

[6] Late in the afternoon on the day before the investigation meeting Delta Civil's representative filed a memorandum advising that the directors were too busy to attend the investigation meeting, and given that the matter had been on-going for some time, recognised that the Authority was unlikely to grant an adjournment. On that basis Delta Civil accepted the relief which Mr Kelly set out in the statement of problem, namely 45 hours owing and annual leave entitlement.

[7] Delta Civil further sought that, if the Authority was prepared to make the orders, the investigation meeting be vacated.

[8] The Authority took Delta Civil's memorandum as a request for a consent determination. However, Mr Kelly still wished to attend the investigation meeting

[9] The investigation meeting was held on 20 July 2018. There was no appearance for Delta Civil. An attempt was made to contact their representative and a message left, but no reply received. I was satisfied that Delta Civil received notification of the investigation meeting and I proceeded with the meeting. I heard evidence from Mr Kelly.

## **Wage Arrears**

[10] Mr Kelly claims that he is owed for 45 hours work at \$30.00 gross per hour, totalling \$1350.00. Delta Civil has now accepted that it owes Mr Kelly that money.

[11] Delta Civil Limited is ordered to pay Mr Kelly \$1350.00 gross in wage arrears within 7 days of the date of this determination.

## **Holiday Pay**

[12] Delta Civil did not provide Mr Kelly with payslips, so he had difficulty knowing how much holiday pay he was entitled to. He was not paid any holiday pay after his resignation. Mr Kelly claims holiday pay of \$810.00, which he calculated in

accordance with information on the government's employment website. Delta Civil now accepts that it owes Mr Kelly that holiday pay.

[13] I order Delta Civil Limited to pay Mr Kelly the sum of \$810.00 gross as holiday pay, within 7 days of the date of this determination.

### **IRD Issues**

[14] Mr Kelly has been informed by the Inland Revenue Department (IRD) that it has not received PAYE from Delta Civil on Mr Kelly's behalf. Delta Civil Limited is ordered to pay PAYE to the IRD for the wages which it has already paid him and the sums ordered to be paid under this determination. A copy of this determination is to be sent to the IRD.

### **Interest**

[15] It has now been almost a year since Mr Kelly has resigned from Delta Civil. He has gone to much effort to pursue his entitlements and has now had a considerable period without them. I order Delta Civil to pay interest at the prescribed rate of 5% on \$2160.00 (being the wages of \$1350.00 and the holiday pay of \$810.00) from 11 August 2017 until the date of payment.

### **Certificate of Determination**

[16] I order that a certificate of determination be issued along with this determination.

### **Costs**

[17] Mr Kelly seeks the filing fee for this application. I order Delta Civil Limited to pay the sum of \$71.56 to Mr Kelly within 7 days of the date of this determination, for the filing fee.

Nicola Craig

Member of the Employment Relations Authority