

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Lalesh Kumar (Applicant)
AND Lendich Construction Limited (Respondent)
REPRESENTATIVES Lalesh Kumar In person
Danny Lendich, Advocate for Respondent
MEMBER OF AUTHORITY Leon Robinson
INVESTIGATION MEETING 11 May 2005
DATE OF DETERMINATION 11 May 2005

DETERMINATION OF THE AUTHORITY

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- A. Lendich Construction Limited is ordered to forthwith pay to Lalesh Kumar the gross sum of \$1,332.00 as arrears of wages.**
- B. Lendich Construction Limited is ordered to forthwith pay to Lalesh Kumar the gross sum of \$1,661.40 as arrears of holiday pay.**
- C. Lendich Construction Limited is ordered to forthwith pay interest on the judgment sum of \$2,993.40 at the rate of 9% per annum from 29 June 2004 until the date of payment.**
- D. Lendich Construction Limited is ordered to forthwith pay \$70.00 to Lalesh Kumar in respect of the lodgement fee on this application.**
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Employment Relationship Problem

[1] The problem between these parties is Mr Lalesh Kumar's ("Mr Kumar") claim that he is owed one week's final wages and holiday pay. The employer Lendich Construction Limited ("Lendich") resists Mr Kumar's claim. The essence of its defence is captured in its statement in reply where it says "*because of Mr Kumar's deceit, dishonesty and no notice we do not owe him anything in fact we should sue him.*"

[2] I directed the parties to attend mediation but Lendich's manager Mr Danny Lendich ("Mr Lendich") advised the Authority's support staff Lendich flatly refused to attend mediation.

The facts

[3] Mr Kumar was employed by Lendich from 3 December 2003 until 29 June 2004.

[4] Contrary to law, the terms of Mr Kumar's employment were not recorded in a written individual employment agreement.

[5] At the end of the work day on 29 June 2004, Mr Kumar told Mr Lendich that he would not be coming back to work. He commenced new employment the following day.

[6] By letter dated 13 August 2004 Mr Kumar's accountant wrote to Lendich and made demand for arrears of eight days wages in the gross sum of \$1,359.00 being 75.5 hours x \$18.00 per hour. That figure was subsequently revised.

[7] The accountant then referred the matter to the Department of Labour's Labour Inspectorate by letter dated 10 September 2004.

[8] The Labour Inspectorate wrote to Mr Lendich by letter dated 2 February 2005 giving notice of Mr Kumar's claim for arrears.

[9] Mr Lendich by letter dated 16 February 2005 wrote to the Labour Inspector setting out Lendich's position. The essence of that position was that Lendich was withholding Mr Kumar's entitlements in lieu of notice.

[10] At the termination of his employment Mr Kumar was owed \$1,332.00 for arrears of wages and \$1,661.40 for holiday pay. Lendich does not dispute Mr Kumar is entitled to those sums.

Determination

[11] Lendich ought to be aware of Section 4 of the Wages Protection Act 1983. That provision is as follows:-

*4. No deductions from wages except in accordance with Act
Subject to sections 5(1) and 6(2) of this Act, an employer shall, when any wages become payable to a worker, pay the entire amount of those wages to that worker without deduction.*

[12] Lendich's withholding of Mr Kumar's wages is tantamount to a deduction. Without Mr Kumar's written authority to make a deduction, Lendich was not lawfully able to withhold either Mr Kumar's holiday pay or final wages.

[13] Mr Kumar did not give any such authority and Lendich has not reserved to itself any contractual right to make such a deduction in the event that Mr Kumar failed to give notice. Lendich has therefore acted unlawfully in withholding Mr Kumar's final wages and holiday pay.

[14] Nothing in what Mr Lendich tells me justifies the withholding of Mr Kumar's wages. I shall not repeat those repugnant racial slurs here.

Orders

[15] **Lendich Construction Limited is ordered to forthwith pay to Lalesh Kumar the gross sum of \$1,332.00 as arrears of wages.**

[16] **Lendich Construction Limited is ordered to forthwith pay to Lalesh Kumar the gross sum of \$1,661.40 as arrears of holiday pay.**

[17] As Mr Kumar has not had the use of the above sums, I think it fit that he should have interest. **Lendich Construction Limited is ordered to forthwith pay interest on the judgment sum of \$2,993.40 at the rate of 9% per annum from 29 June 2004 until the date of payment.**

Costs

[18] Mr Kumar is entitled to be reimbursed the lodgement fee on this application given his success. **Lendich Construction Limited is ordered to forthwith pay \$70.00 to Lalesh Kumar in respect of the lodgement fee on this application.**

Leon Robinson
Member of Employment Relations Authority