

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2022] NZERA 559
3170942

BETWEEN AVA MOULTON-HARDEN
Applicant

A N D REX EVERETT and
MARY JOY EVERETT
Respondents

Member of Authority: Philip Cheyne

Representatives: Paul Mathews, advocate for the Applicant
No appearance by the Respondents

Investigation Meeting: 31 October 2022 at Christchurch

Date of Determination: 31 October 2022

DETERMINATION OF THE AUTHORITY

This determination is a written record of an oral determination delivered on 31 October 2022.

- A. The claims against Rex Everett are dismissed.**
- B. Mary Joy Everett is to pay Ava Moulton-Harden arrears of wages and holiday pay of \$446.69.**
- C. Mary Joy Everett is to pay Ava Moulton-Harden interest of \$9.62.**
- D. Mary Joy Everett is to pay Ava Moulton-Harden costs of \$821.56.**

Employment relationship problem

[1] Rexjoy Enterprise Limited (In Liquidation) was ordered to pay Ava Moulton-Harden arrears of wages and holiday pay, and compensation for a personal grievance in an earlier determination of the Authority.¹ The orders have not been complied with.

[2] By this application, Ms Moulton-Harden sought leave to recover the arrears of wages and holiday from Rex Everett and May Joy Everett, in reliance on s 142Y of the Employment Relations Act 2000 (the Act).

[3] Mr Mathews at late notice was unable to appear, but provided submissions. I take from the submissions that the claim for a penalty is abandoned, as is the claim for leave to recover the arrears from Rex Everett. The statement of problem is amended accordingly. What remains is the claim against Ms Everett for leave to recover arrears, interest on that sum and costs on this application.

The Authority's Investigation

[4] Mr Everett and Ms Everett did not participate in the case management conference.

[5] Mr Everett and Ms Everett did not appear today. I am satisfied from the file that the statement of problem, the directions of the Authority and the notice of investigation meeting were served on them both.

[6] Only Ms Moulton-Harden appeared and gave evidence.

[7] There is an email on file from Joy Everett responding to correspondence from the Authority. I take it that the sender is the respondent Mary Joy Everett. Ms Everett says that the liquidator has "closed all claims against the company".

¹ *Ava Moulton-Harden v Rexjoy Enterprises Limited* [2021] NZERA 291.

[8] The companies register shows that Rexjoy Enterprise Limited was removed on 18 August 2022.

Correction of accidental slip

[9] The original claim (file number 3119912) correctly identified the company as “Rexjoy Enterprise Limited”. However, orders were expressed to be against “Rexjoy Enterprises Limited” (emphasis added).

[10] In the Authority’s earlier directions in the present matter, I noted that the error could be corrected. I do so now and confirm that the orders expressed to be against Rexjoy Enterprises Limited in the determination [2021] NZERA 291 required Rexjoy Enterprise Limited to pay the specified amounts.

Findings – persons involved

[11] Section 142Y of the Act permits an employee to recover from a person who is not their employer any wages or other money payable, in defined circumstances.

[12] Rexjoy Enterprise Limited had employed Ms Moulton-Harden. The company was ordered to pay Ms Moulton-Harden \$446.69 in wages and holiday pay, but there has been a default in payment of that sum.

[13] Employment standards include minimum entitlements and payments under the Holidays Act 2003 and the Minimum Wage Act 1983. The company’s default in payment of the wages and holiday pay is a breach of employment standards.

[14] Rex Everett was the company’s sole shareholder and director. In submissions, Mr Mathews referred me to the Authority’s findings in another matter against the company² and accepted that I should make the same finding here that Mr Everett was not a person involved

² *Labour Inspector v Rexjoy Enterprise and oths* [2022] NZERA 74

in the breaches of employment standards affecting Ms Moulton-Harden. I do so. The claim against Mr Everett must be dismissed.

[15] Mary Everett is a person involved in the company's breach of employment standards as she was knowingly concerned in the breaches. Ms Everett managed the business owned by the company, knew Ms Moulton-Harden's hours of work and the wages she was paid. Ms Everett also knew that Ms Moulton-Harden was not paid holiday pay at the end of her employment. Ms Everett did not ensure that the company complied with the Minimum Wage Act 1983 and the Holidays Act 2003. Ms Everett as manager of the company's business was in a position to exercise significant influence over its management and operation.

[16] Rexjoy Enterprise Limited (In Liquidation) is unable to pay the arrears of wages and holiday pay.

[17] Ms Everett has provided no evidence that that her involvement in the breaches of the Minimum Wage Act 1983 and Holidays Act 2003 was due to reliance on information supplied by another person, or that she took reasonable and proper steps to ensure the company's compliance with those employment standards. In those circumstances, I grant Ms Moulton-Harden leave to recover the arrears against Ms Everett.

Penalty

[18] It is not necessary to make any findings as the claim has been abandoned.

Interest

[19] In a matter involving the recovery of money, the Authority is empowered to order the inclusion of interest calculated in accordance with the Interest on Money Claims Act 2016. I am able to include interest for the whole or part of the period from when the cause of action arose and the date of payment in accordance with the Authority's determination.

[20] Interest had not been sought in the original claim against the company. However, interest is now sought. Ms Everett was in effect on notice about her potential liability as a person involved from the date of the Authority's earlier determination. I fix the date of the earlier order against the company (8 July 2021) as the starting point for the calculation of interest. As the order will require immediate payment of the arrears, I fix today's date as the end point for the interest calculation.

[21] Interest from 8 July 2021 to the date of this determination totals \$9.62. I will order interest of that amount to be paid.

Costs

[22] Costs in respect of the present claim are sought.

[23] Ms Moulton-Harden has been successful and on ordinary principle is entitled to costs. Mr Mathews submitted that costs on this application of \$750.00 plus the lodgement fee should be ordered.

[24] The investigation meeting was brief, but that reflects the respondents' non-involvement. Ms Moulton-Harden has incurred costs for Mr Mathews' time preparing the application, preparing for and attending the case management conference and preparing submissions. Costs of \$750.00 would be a modest contribution to that. There will be an order for costs in that sum, together with \$71.56 for the lodgement fee.

Philip Cheyne
Member of the Employment Relations Authority