

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 631
3277580

BETWEEN MY PLACE AOTEAROA
LIMITED
Applicant

AND HOLLIE-LEE TAITUMA
Respondent

Member of Authority: Alex Leulu

Representatives: David Kraitzick, counsel for the Applicant
No appearance by the Respondent

Investigation Meeting: On the papers

Submissions and documents received: 22 August 2024 from the Applicant
Nothing received from the Respondent

Determination: 18 October 2024

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Hollie-Lee Taituma was previously employed by My Place Aotearoa Limited (MPAL). Ms Taituma's employment for MPAL ended on 22 August 2022. On Ms Taituma's last day of work, MPAL processed her final pay. Due to a clerical error, MPAL overpaid Ms Taituma by a significant amount.

[2] After discovering the error, MPAL took steps to recover the overpayment from Ms Taituma. Although Ms Taituma paid back some of the overpayment, MPAL said \$9,641.11 remained outstanding. MPAL has applied to the Authority seeking an order against Ms Taituma to pay MPAL the outstanding overpayment amount.

[3] In response to MPAL, Ms Taituma acknowledged she owed MPAL the outstanding amount but due to her financial circumstances, she was unable to pay back the full outstanding amount.

The Authority's investigation

[4] Apart from lodging her statement in reply, Ms Taituma did not participate in the Authority's investigation. I am satisfied that the Authority has made reasonable attempts to notify Ms Taituma of the various stages of the Authority's investigation into MPAL's claims.

[5] In the interests of avoiding unnecessary costs and time, MPAL agreed for the matter to be heard on the papers. A timetable was set for both parties to lodge and serve affidavits and supporting evidence to support their position. On behalf of MPAL, Rangitutaki Queenie Pouwhare lodged and served her affidavit and supporting evidence on 20 August 2024. No information was lodged by Ms Taituma.

[6] As permitted by s 174E of 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 issue

[7] The issue requiring investigation and determination is whether Ms Taituma was overpaid amounts from MPAL and if so, should an order be made for Ms Taituma to pay MPAL the outstanding overpaid amounts.

Context

[8] MPAL operates as Mana Ātea which specialises in tikanga-led disability support services. On 22 November 2022 Ms Taituma started her employment for MPAL in the role of Pouawhina.

[9] On 22 August 2023 Ms Taituma's employment ended, and her final pay was to be processed and paid on 22 August 2023. Ms Taituma was due to be paid \$8,054.99 into her account. Ms Taituma's final pay was incorrectly calculated and instead she was paid \$33,451.50.

[10] MPAL discovered the overpayment on 23 August 2023 and contacted Ms Taituma by email to arrange a plan for Ms Taituma to repay the overpayment. On 25 August 2023 Ms Taituma informed MPAL she had already spent a portion of the overpayment. Ms Taituma was able to initially repay MPAL a significant portion of the overpayment.

[11] From August 2023 to November 2023, further attempts were made by MPAL to arrange a suitable repayment plan with Ms Taituma to repay the remaining amount. This led to further amounts paid to MPAL by Ms Taituma.

[12] Ms Taituma and MPAL were close to coming to a final agreement on a suitable repayment plan for the remaining amount. However, Ms Taituma ceased communication with MPAL on 21 November 2023. A total overpayment amount of \$9,641.11 remains outstanding.

MPAL's claim for overpayment

The Authority's Jurisdiction

[13] The Authority has general jurisdiction to resolve problems that arise from employment relationships. This jurisdiction was confirmed in recent years by the Supreme Court and supports the view that the Authority's jurisdiction extends to an employer seeking reimbursement from an employee of an overpayment of wages where the employment has ended.¹

[14] The Employment Court has also previously provided guidance which confirmed the Authority's jurisdiction to determine these types of overpayments claims as restitution or unjust enrichment.² The Court confirmed the following elements were required to support an employer's claim for reimbursement of an overpayment:

- (a) proof of an enrichment by receipt of a benefit;
- (b) a corresponding deprivation of the donor; and
- (c) the absence of some legal principle justifying the enrichment.

¹ *FMV v TZB* [2021] NZSC 102.

² *New Zealand Fire Service Commission v Warner* [2010] NZEmpC 90 at [19] and [39].

Assessing MPAL's evidence

[15] Ms Pouwhare's evidence in support of MPAL showed the above elements were met and included evidence on how much was overpaid to Ms Taituma and Ms Taituma's final payslip showing the amounts she should have been paid as part of her final pay.

[16] Based on the available evidence, I am unable to find any legal basis on which Ms Taituma should not have to pay back the outstanding overpayments to MPAL.

[17] As previously stated, Ms Taituma did not dispute she owed the outstanding amounts in her statement in reply. Ms Taituma position is also reflected in Ms Pouwhare's evidence which confirmed MPAL's ongoing communication with Ms Taituma to recover the overpayments which led to some incremental payments made by Ms Taituma to MPAL.

[18] However, Ms Taituma ceased ongoing communication with MPAL and as a result, I accept Ms Taituma still owed MPAL the outstanding amount. Accordingly, I order Ms Taituma to pay MPAL the outstanding overpayment amount of \$9,641.11 within 28 days of the date of this determination

Costs and reimbursement of filing fee

[19] MPAL said it has incurred legal costs of \$4,862.22 (not including GST) associated with making its claim to the Authority. MPAL sought an order for costs and disbursements against Ms Taituma of \$3,683 and reimbursement of the filing fee of \$71.55. In support of its claim for costs, MPA relied on the daily rates as set out in the District Court Rules 2014.

[20] When the Authority considers costs, it exercises a discretion. In exercising that discretion, it does so in a principled way. Costs are not to be used as a punishment or an expression of disapproval of the unsuccessful party's conduct.

[21] Although this matter was heard on the papers, I am satisfied that a contribution to costs is appropriate given the amount of time that has passed and the reasonable efforts of MPAL and its legal representative to try and resolve the matter with the need of an Authority determination.

[22] A fair and reasonable award of costs is \$500. Ms Taituma is also ordered to pay MPAL \$500 in costs and \$71.55 filing fee within 28 days of the date of this determination.

Alex Leulu
Member of the Employment Relations Authority