

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 502
5418627

BETWEEN

HAZEL NOVAK
Applicant

A N D

JOSHUA MATTA t/a BLUR
OPTIX
Respondent

Member of Authority: T G Tetitaha
Representatives: Applicant in person
No appearance for Respondent
Investigation Meeting: 7 November 2013 by telephone
Date of Determination: 7 November 2013

DETERMINATION OF THE AUTHORITY

- A. Joshua Matta is ordered to pay Hazel Novak the sum of \$3,555.73 being wage arrears pursuant to s131 Employment Relations Act 2000;**
- B. An order pursuant to clause 11 Schedule 2 of the Act interest on the judgment sum set out above at the rate of 5% per annum calculated from 22 February 2013 until the date of payment;**
- C. An order pursuant to clause 15 Schedule 2 of the Act for Joshua Matta to pay \$71.56 towards Ms Novak's costs**

Employment relationship problem

[1] Hazel Novak was employed as a sales manager by Joshua Matta t/a Blur Optix on 22 October 2012. She resigned on 22 February 2013 due to issues with her pay. Ms Novak had not received payment for work completed since 7 February 2013.

Ms Novak is seeking recovery of wage arrears pursuant to s.131 of the Employment Relations Act 2000 (the Act).

[2] Mr Matta resides in Australia. Ms Novak was granted leave to serve him in Australia and filed a sworn statement confirming personal service. He has taken no steps in these proceedings.

[3] A teleconference was set down for 7 November 2013 following service. Mr Matta failed to appear.

Issues

[4] The following issues arise:

- (a) Does the Authority have power to proceed at a teleconference if Mr Matta fails to attend?
- (b) Should an order for wage arrears be made in favour of Ms Novak?

Does the Authority have power to proceed at a teleconference if Mr Matta fails to attend?

[5] The Authority has the power to proceed if any party fails to attend a hearing pursuant to clause 12 of Schedule 2 of the Act.

[6] Mr Matta was served in person on 19 June 2013 with the statement of problem at the offices of Blur Optix, 249 Chapel Street, Prahran, Melbourne. A sworn statement from the process server has been filed. The matter was directed to mediation.

[7] Mr Matta emailed Mediation Services in Hamilton from an email address joshua@bluroptix.com declining to attend mediation.

[8] To progress matters, the Authority issued a Minute directing Ms Novak to file a sworn affidavit confirming personal service upon Mr Matta. A teleconference was set down for the purposes of determining this matter. The Authority directed a copy of the Minute to be sent to Mr Matta at the offices of Blur Optix, 249 Chapel Street, Prahran, Melbourne and via email to his email address, joshua@bluroptix.com.

[9] The notice for the teleconference was sent to Mr Matta on 7 October 2013. A return email was received from Mr Matta stating he was out of his office until

18 October 2013. A further date for a teleconference was set down for 11am on 7 November 2012.

[10] No good cause has been shown for the failure by Mr Matta to attend the teleconference. Given the efforts to contact Mr Matta and serve him with proceedings, the Authority determines it may continue to act and determine this matter before it.

Should an order for wage arrears be made in favour of Ms Novak?

[11] Ms Novak seeks payment of wage arrears totalling \$3,555.73. These wage arrears comprise salary of \$3,010.04 and vehicle allowances of \$1,153.84 for the period 28 January to 22 February 2013; work expenses of \$80.90; pay discrepancies for the period 22 October to 28 December 2012 of \$97.85 and holiday pay of \$300, less payment received of \$1086.90.¹

[12] Ms Novak was employed to work in Mr Matta's New Zealand offices situated at Suite 404, Level 4 Ironbark, 150 Karangahape Road, Auckland. These offices were closed in March 2013. Ms Novak resigned on 22 February 2013.

[13] A letter dated 1 October 2012 from Mr Matta to Ms Novak contained the terms and conditions of her employment. These terms and conditions include a base salary of \$50,000 and a vehicle allowance of \$15,000².

[14] Ms Novak provided copies of her payslips for October to December 2012 confirming payment of similar amounts to those claimed and a calculation of the alleged pay discrepancies for the relevant periods.³

[15] A letter demanding payment of the above amounts was sent to Mr Matta on 14 March 2013, but received no reply.

[16] The Authority is satisfied there is sufficient evidence that Ms Novak is owed wage arrears of \$3,555.73.

[17] The Authority makes the following orders:

¹ Document A1 statement of problem

² Document B statement of problem

³ Document E statement of problem

- (a) Joshua Matta is ordered to pay Hazel Novak the sum of \$3,555.73 being wage arrears;
- (b) An order pursuant to clause 11 Schedule 2 of the Act interest on the judgment sum set out above at the rate of 5% per annum calculated from 22 February 2013 until the date of payment;
- (c) An order pursuant to clause 15 Schedule 2 of the Act for Joshua Matta to pay \$71.56 towards Hazel Novak's costs

T G Tetitaha
Member of the Employment Relations Authority