

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 103
5368280

BETWEEN

JOSE HERNANDO ORTIZ
OSORIO
First Applicant

DIONISIO MURCIA
Second Applicant

DUBER NEY OSORIO
RESTREPO
Third Applicant

FERNANDO BONILLA
CLAVIJO
Fourth Applicant

FERNANDO ESPINOSA
Fifth Applicant

HAROLD JORDAN
Sixth Applicant

JORGE ELIECER MEDINA
HENAO
Seventh Applicant

AND

TRUESTONE LIMITED
Respondent

Member of Authority: Rachel Larmer

Representatives: Juergen Pothmann, Advocate for Applicants
No appearance by Respondent

Investigation Meeting: 15 March 2012 at Hamilton

Determination: 22 March 2012

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The seven applicants were all employed by Truestone Limited (“the respondent”) in November 2011 pursuant to written individual employment agreements. Mr Sefita Toutai Hansen is the sole director and shareholder of the respondent and it was Mr Hansen who entered into the agreements with each of the applicants.

[2] All of the applicants were employed as Painter - Labourers and their services were provided on either two or, in the case of most of the applicants, three houses in Kenny Crescent in Hamilton. Pursuant to clause 7.1 of each of the employment agreements, the applicants were to be paid \$14.50 per hour for every hour worked.

[3] The applicants said that Mr Hansen agreed with them at the outset of their employment that they would receive their first pay in cash on 18 November 2011. None of the applicants have been paid anything for the work they performed. They now seek an order from the Authority that the respondent pay them for the hours they have worked.

Background

[4] The applicants advocate, Mr Pothmann wrote to Mr Hansen on 23 November 2011 requesting payment of the applicants’ wages as per the terms and conditions of their individual employment agreements and advising that they would pursue a wages recovery action if payment was not forthcoming. No response was received.

[5] The applicants filed a statement of problem (“SoP”) with the Authority on 16 January 2012 which I am satisfied was served on the respondent. No statement in reply has been received. No application for leave to file a statement in reply out of time has been received.

[6] An investigation meeting was set down for 15 March 2012 at Hamilton. The Notice of Hearing and copies of the witness statements which had been filed by each of the applicants was personally served on Mr Hansen on 2 March 2012 by Mr Pothmann, who provided the Authority with an affidavit of service.

[7] The parties were directed to mediation which occurred in Hamilton on 14 March 2012. Mr Hansen attended mediation on behalf of the respondent.

[8] Mr Hansen contacted the Authority by telephone after the mediation on 14 March 2012 and said he would not be attending the investigation meeting the following day because he had to travel out of town for business. He was told that because no statement in reply had been filed the respondent would require the leave of the Authority to defend this matter.

[9] Mr Hansen said he would send something through straightaway, but he did not do so. He was advised that the meeting would proceed on 15 March 2012 even if the respondent did not attend.

[10] The respondent did not attend the Authority's investigation meeting. Mr Pothmann told me that Mr Hansen had told him that he would earn more money by working on 15 March 2012 than he would lose by not attending the investigation meeting.

[11] Each of the applicants gave evidence on oath to confirm the contents of their witness statements which set out their days and times of work, the total hours they had worked, their hourly rate as set out in their individual employment agreement, and the total amount of their claim. I am satisfied that each of the applicants proved their claim to the required standard.

[12] In terms of each particular applicant, I find that:

- (i) Jose Hernando Ortiz Osorio worked the 12 week days between 3 and 18 November for 9 hours each day. He was therefore owed a total of 108 hours x \$14.50 which was the rate of pay recorded in his written employment agreement. **The respondent is ordered to pay Mr Ortiz Osorio the sum of \$1,566.00.**
- (ii) Dionisio Murcia worked 10 week days between 7 and 18 November 2011 for 9 hours each day. He is therefore owed a total of 90 hours x \$14.50 being the rate of pay recorded in his written employment agreement. **The**

respondent is ordered to pay Mr Murcia the sum of \$1,305.00.

- (iii) Duber Ney Osorio Restrepo worked 11 week days between 4 and 18 November 2011 for 9 hours each day. He is therefore owed a total of 99 hours x \$14.50 being the rate of pay recorded in his written employment agreement. **The respondent is ordered to pay Duber Ney Osorio Restrepo the sum of \$1,435.50.**
- (iv) Fernando Bonilla Clavijo worked 10 week days from between 7 and 18 November 2011 for 9 hours each day. He is therefore owed a total of 90 hours x \$14.50 being the rate of pay recorded in his written employment agreement. **The respondent is ordered to pay Fernando Bonilla Clavijo the sum of \$1,305.00.**
- (v) Fernando Espinosa worked 12 week days from between 3 and 18 November 2011 for 9 hours each day. He is therefore owed a total of 108 hours x \$14.50 being the rate of pay recorded in his written employment agreement. **The respondent is ordered to pay Fernando Espinosa the sum of \$1,566.00.**
- (vi) Harold Jordan worked 10 week days from between 3 to 16 November 2011 for 9 hours each day. He is therefore owed a total of 90 hours x \$14.50 being the rate of pay recorded in his written employment agreement. **The respondent is ordered to pay Harold Jordan the sum of \$1,305.00.**
- (vii) Jorge Eliecer Medina Henao worked 10 week days from between 3 to 16 November 2011 for 9 hours each day. He is therefore owed a total of 90 hours x \$14.50 being the rate of pay recorded in his written employment agreement. **The respondent to pay Jorge Eliecer Medina Henao the sum of \$1,305.00.**

[13] I order the respondent to pay each applicant the amount referred to in paragraph 12 above within 28 days of the date of this determination.

Costs

[14] The notice of hearing and witness statements filed by each of the applicants was personally served on Mr Hansen on 2 March 2012 by Mr Pothmann.

Costs are reserved.

Rachel Larmer
Member of the Employment Relations Authority