IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE

BETWEEN		RAHULKUMAR BABUBHAI PATEL
		Applicant
AND		DUNEDIN COMMUNITY CARE TRUST
		Respondent

Member of Authority:	David G Beck
Representatives:	Applicant in person Diana Hudson counsel for the Respondent
Investigation Meeting:	On the papers
Submissions Received:	4 October 2024 from the Applicant 23 October 2024 from the Respondent
Date of Determination:	24 February 2025

SECOND DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1]   Rahulkumar Babubhai Patel worked for the Dunedin Community Care Trust (DCCT) as a full time salaried service manager in Christchurch, between 8 November 2021 and 31 October 2022.

[2]   During the period of his employment Mr Patel says he was obligated to make himself available to deal with work matters at all hours and on all days, including public holidays and should be compensated for such as if he had the status of an 'on call' worker and be paid an allowance.

[3]   DCCT say there was no express expectation Mr Patel should make himself available outside his core working hours and no provision in his employment agreement to pay an

on-call allowance. DCCT says an 'on call' allowance was introduced in October 2022 as a policy measure and Mr Patel was paid such.

[4] In a determination of 16 August 2024, I found:

> In all of the circumstances I do not find Mr Patel to have made out a case that his agreed terms of engagement including his individual employment agreement, required DCCT to pay him an on-call allowance and s 67D of the Act is not triggered. The terms of the IEA while being unclear on hours of work and days when such work be undertaken, sufficiently provide that Mr Patel's total salary was compensation for all duties he undertook including those outside his normal office hours.

> I, however, do not consider that the employment agreement's salary provision despite it not providing for the payment of overtime in his normal role, extended to covering the times Mr Patel covered rostered shifts. I consider such were a separate engagement and when Mr Patel undertook this essentially relief work, he was acting as a care worker and should have been appropriately remunerated at an applicable hourly rate. In applying the discretion, I have under s 160(3) of the Act where I am "not bound to treat a matter as being a type described by the parties" I make the following orders.

> **Orders:**

> (i) Dunedin Community Trust is to, in consultation with Rahulkumar Babubhai Patel, identify and agree on rostered cover shifts Mr Patel undertook while in their employ and provide remuneration for such on the basis of the prevailing care worker's hourly rate for the hours worked.

> (ii) Should the parties be unable to reach an agreement on the number of shifts worked or the compensation for such, they can both make submissions to the Authority by no later than 25 October 2024, and the Authority will determine the matter. [1]

[5] As the parties were unable to resolve the matter of the quantum of arrears of wages owing this determination addresses the issue after considering submissions from the parties.

Mr Patel's submission

[6] Mr Patel contended that he worked 153 shifts to cover support workers in addition to his normal hours of work (40 per week) but he advanced no corroborating evidence to support this claim. The claim amounted to a suggestion that Mr Patel was working an additional three shifts per week over a period of 51 weeks.

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[1] *Rahulkumar Babubhai Patel v Dunedin Community Care Trust* **[2024] NZERA 484 at [**31] –[32].

DCCT's submission

[7]   DCCT submitted that had Mr Patel worked the shifts he claimed there would be corroborating evidence, at least in their incident reporting management system or exchanges between Mr Patel and his direct report. DCCT pointed to the low case load that Mr Patel had in contrast with other managers and the organisation's expectation that a manager in Mr Patel's position was not expected to cover shifts for support workers. DCCT had a rostering system and Mr Patel provided no evidence that he placed himself on any roster. While this was not unusual if he as claimed, was covering for the odd emergency shift it is incomprehensible that he does not appear on any roster if as claimed, he worked regular shifts. At the very least there would be evidence, which none existed, of rostered support workers regularly cancelling shifts.

[8]   However, on the provision of limited communications indicating Mr Patel was seeking time off or understanding of additional working hours DCCT accepted that Mr Patel had worked an additional 40 hours' emergency cover for support workers mainly over weekend periods and not been paid accordingly.

Assessment

[9]   It is reasonably apparent from Mr Patel's submission that concentrated on a separate dispute about his lack of compensation for making himself available on call, that he is conflating the two issues in his compensatory claims. I am not convinced by Mr Patel's claims of working three shifts per week over an extended period as they have no corroborating evidence.

Finding

[10]   I find however, that given DCCT has accepted that Mr Patel was underpaid for additional hours worked as opposed to him regular covering shifts for absent support workers it would be equitable to order he be paid for the 40 hours identified at his manager's rate of pay ($45 per hour) rather than the support worker's rate.

Order

[11]   I order that Dunedin Community Care Trust pay Rahulkumar Babubhai Patel arrears of wages owed in the amount of $1,800 gross.

Costs

[12]   Mr Patel represented himself and while only achieving a very modest outcome, he was still successful and I found in my original determination that a causative factor of the dispute was an employment agreement that did not comply with s 67C(2) of the Employment Relations Act 2000. [2]

[13]   In the circumstances, I find costs should lie where they fall between the parties and no costs award is made.

David G Beck
Member of the Employment Relations Authority

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[2] **At para [16].**