

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 201
3217120

BETWEEN

MARKO PETRESKI
Applicant

AND

OPA ARCHITECTS LIMITED
Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in person
No appearance by the Respondent

Investigation Meeting: 5 April 2024 in Auckland

Date of Oral
Determination: 5 April 2024

Written record issued: 5 April 2024

ORAL DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This determination addresses whether the substantive determination in *Petreski v OPA Architects Limited* dated 18 August 2023 should be re-opened.

[2] In the substantive determination dated 18 August 2023, the Authority found in favour of Mr Petreski and ordered the respondent, OPA Architects Limited (OPA), to pay him wage arrears, interest and to reimburse his filing fee.¹

[3] No money has been paid, so Mr Petreski has applied for compliance orders against OPA and Mr Zhu, who is OPA's sole director, and who is 'a person involved

¹ *Petreski v OPA Architects Limited* [2023] NZERA 458 at [58].

in the breaches of employment standards' that had occurred, as defined by s 142W of the Employment Relations Act 2000 (the Act).²

[4] In the course of preparing his evidence for the compliance order application, Mr Petreski accessed online information about his earnings from OPA from the Inland Revenue Department (the IRD).

[5] As a result, Mr Petreski discovered new information that established that the amount of wage arrears he was awarded in the substantive determination dated 18 August 2023 was inaccurate.³

[6] That situation arose because Mr Petreski had calculated what deductions he thought OPA had made based on the varying net amounts he had received into his bank account, so the substantive determination had been based on that evidence.

The Authority's investigation

Order for substituted service

[7] In the Directions of the Authority (DoA) dated 6 March 2024, the Authority ordered that substituted service of these proceedings on Mr Zhu could occur at OPA's registered address for service.

[8] That occurred because Mr Zhu was not working, or located, at OPA's business premises. The home address Mr Zhu had recorded (as OPA's sole director) on the Companies Register was a large block of flats. That made personal access to Mr Zhu in order to serve him difficult, or even impossible.

Notice of the proposed re-opening

[9] The Authority's Minute dated 7 March 2024 identified the potential inaccuracies in the substantive determination and put the parties on notice that a re-opening of that substantive determination was being considered, in order to address that.

² AEA 3274959.

³ Above n1.

[10] The DoA dated 6 March 2024 and the Minute dated 7 March 2024 (the service documents) were served on OPA and Mr Zhu at OPA's registered address for service, as recorded on the Companies Register.

[11] A process server from The Investigators New Zealand (The Investigators) served the service documents on the respondents at 10.47am on 8 March 2024. Photo proof of service was provided by the process server to the Authority.

Opportunity for the parties to be heard on the proposed re-opening

[12] The Minute dated 7 March 2024 invited the parties to discuss their views on the proposed re-opening of the substantive determination with the Authority during a Case Management Conference to be held on 18 March 2024.

[13] The purpose of the CMC which was held on 18 March 2024 was to address the apparent inaccuracies, to obtain the parties' views on whether the substantive determination should be re-opened and to timetable the lodging of evidence, and to set an investigation meeting date for the reopening issue to be determined.

[14] Mr Petreski attended the CMC but OPA and Mr Zhu did not.

[15] An in-person investigation meeting was set down for 5 April 2024. The Notice of Investigation Meeting was served on OPA and Mr Zhu, at OPA's registered address for service, by a process server from The Investigators at 12.03pm on 21 March 2024.

[16] Mr Petreski lodged a witness statement on 21 March 2024 that addressed the re-opening issues. That was served on OPA and Mr Zhu by track and trace courier at 8.01am on 25 March 2024, by delivery to OPA's registered address for service. Photo proof of service was provided to the Authority by the courier.

Investigation meeting

[17] An in-person investigation meeting was held in Auckland on 5 April 2024. Mr Petreski attended, gave evidence under affirmation and was questioned by the Authority about his witness statement.

[18] OPA and/or Mr Zhu did not attend the investigation meeting. They have received all relevant information, but elected not to participate in the Authority's investigation.

Issues

[19] The following issues are to be determined:

- (a) What errors occurred in the substantive determination dated 18 August 2023?
- (b) Should the substantive determination be re-opened?
- (c) What if any costs and disbursements should be awarded?

What errors occurred in the substantive determination dated 18 August 2023?

[20] The following minor errors occurred in the substantive determination dated 18 August 2023:

- (a) Mr Petreski was described as having been employed as “an Architectural Graduate” in paragraph [1] of the substantive determination, when his original employment agreement recorded his position as “Architectural Designer”;
- (b) Paragraphs [5] and [29] of the substantive determination recorded that since Mr Petreski’s employment had ended on 31 March 2023, the respondent had paid him a total of \$8,065.29 gross. However, according to Mr Petreski’s IRD record, he had actually received \$8,044.51 gross from the respondent;
- (c) Paragraphs [5], [29], [36], [37] and [58](a) of the substantive determination recorded that Mr Petreski was owed total wage arrears of \$4,299.60 gross. However, the error in the amount that Mr Petreski had been paid meant that the correct amount of total wage arrears he was owed was \$4,320.38 gross;
- (d) Paragraph [41] of the substantive determination correctly recorded that interest was to run from 1 April 2022. However, paragraph [58](b) in the substantive determination incorrectly stated that interest was to run from 1 April 2021.

Should the substantive determination be re-opened?

[21] Pursuant to clause 4 of Schedule 2 of the Act, the Authority may of its own volition re-open an investigation upon such terms as it considers reasonable.

[22] Therefore, one way to correct the errors in the substantive determination dated 18 August 2023 would be to re-open the substantive determination and to issue new orders that corrected these errors.

[23] Although the Authority also considered whether it would be appropriate to issue an erratum, instead of reopening the substantive investigation, that option was not considered to be the most suitable.

[24] The length of time that has elapsed since the substantive determination dated 18 August 2023 has been made publicly available meant there was a high risk that some people may have already downloaded the original version, which would likely cause confusion if it was subsequently changed by way of an erratum.

[25] There was also a good likelihood that this matter will continue to the Employment Court, if OPA and/or Mr Zhu fail to pay Mr Petreski the wage arrears and other money he is owed. Failure to re-open the substantive determination to correct these errors could cause later issues to arise with enforcement, so that should be avoided.

[26] Another factor that weighed against an erratum was that Mr Petreski has sought compliance orders, so it was necessary to ensure that the amount he is owed and the date from which interest was to run had been correctly recorded in a publicly available determination.

[27] The Authority therefore considered it reasonable, necessary and appropriate to re-open the substantive investigation in matter number 3217120 for the limited purpose only of correcting the minor errors that Mr Petreski identified in his witness statement dated 21 March 2024, and to enable to Authority to issue updated orders.

Changes made to the substantive determination dated 18 August 2023

[28] After re-opening the substantive investigation, subsequent to the parties and Mr Zhu having had a reasonable opportunity to be heard, the Authority determined that changes needed to be made to the substantive determination dated 18 August 2023, by issuing new orders.

[29] The Authority orders that the following changes are now made to the substantive determination dated 18 August 2023:⁴

- (a) The word “Graduate” in paragraph [1] is changed to “Designer”;
- (b) The references to “\$8,065.29” in paragraphs [5] and [29] are changed to “\$8,044.51”;
- (c) The references to “\$4,299.60” in paragraphs [5], [29] [36], [37] and [58](a) are changed to “\$4,320.38”; and
- (d) The reference in paragraph [58](b) to “2021” is changed to “2022”;
- (e) Paragraph [58] of the 18 August 2023 determination has been replaced by the new orders set out in paragraph [31] of this determination, as per below.

[30] The information set out in paragraph [29] above has replaced that information in the substantive determination dated 18 August 2023, meaning both determinations will need to be read together in order to ascertain the correct amounts that Mr Petreski is owed.

New orders

[31] Paragraph [58] of the substantive determination dated 18 August 2023 has now been replaced with the following new orders:

- (a) Within 14 days of the date of this determination, OPA Architects Limited (OPA) is ordered to pay Mr Petreski \$4,849.46, consisting of:
 - (i) \$4,320.38 gross wage arrears;
 - (ii) \$457.53 interest from 1 April 2022 to the date of this determination, calculated using the Civil Debt Calculator on the Ministry of Justice website;
 - (iii) \$71.55 filing fee reimbursement;
- (b) Within fourteen days of the date of this determination, Mr Zhu is ordered to take all necessary steps to ensure that OPA:

⁴ Above n1.

- (i) Paid Mr Petreski the \$4,849.46 gross wages and other money he is owed; and
- (ii) Remitted to IRD the correct deductions that had to be made from Mr Petreski's salary;
- (c) If OPA is unable to pay Mr Petreski the wage arrears and other money he is owed by 4pm on 19 April 2024, then Mr Zhu is ordered to advise the Authority of that in writing by no later than 4pm on 19 April 2024;
- (d) If OPA is unable to pay Mr Petreski the wage arrears and other money he is owed, then Mr Zhu is ordered to personally pay him all of the outstanding wage arrears and other money (including accrued interest and filing fees) by no later than 4pm on 6 May 2024;

[32] The order requiring Mr Zhu to personally pay Mr Petreski if OPA was unable to pay him was made under s 142Y of the Act, based on the leave that was granted to Mr Petreski under s 142Y(2) of the Act.⁵

[33] Failure of OPA and/or Mr Zhu to pay Mr Petreski the full amount of wage arrears and other money (including interest and filing fees) he is owed, by the due dates recorded in paragraph [31] of this determination, will likely result in compliance orders being issued against them.

[34] An in-person investigation meeting into Mr Petreski's compliance order application (lodged under matter number 3274959) has therefore been set down for 2pm on 10 May 2024.

Costs

[35] The substantive determination was re-opened at the Authority's initiative, so Mr Petreski did not incur a filing fee. As a self-represented party he also did not incur any legal costs. Accordingly, no costs or disbursements are awarded.

Rachel Larmer
Member of the Employment Relations Authority

⁵ Above n1, at [52].