

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2012] NZERA Christchurch 28
5350695

BETWEEN RAJ MEGHANA BAHEN
 PRAVINSINH
 Applicant

A N D SAVVY CONTRACTING 2008
 LIMITED
 Respondent

Member of Authority: Helen Doyle

Representatives: Stephanie Moses, Counsel for Applicant
 No appearance for Respondent

Investigation Meeting: 31 January 2012 at Blenheim

Further information 8 February 2012 from Applicant
received:

Date of Determination: 16 February 2012

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Raj Meghana bahen Pravinsinh was introduced by a friend to Amrik Singh whilst living in Auckland in or about 2010. Mr Singh advised Ms Pravinsinh that he had businesses in Blenheim and may be appointing in the future. He advised her that there were plenty of opportunities for management jobs in Blenheim which was an area in which she had a qualification. Ms Pravinsinh gave her curriculum vitae to Mr Singh and was subsequently contacted by him and advised that there was a position available as an office manager in vineyard contracting in Blenheim.

[2] Ms Pravinsinh received a written letter of offer for appointment as an Office Manager with Savvy Contracting 2008 Limited starting on 10 May 2010 for a two year period. Attached to the letter of offer was a written individual employment agreement which Ms Pravinsinh signed on 10 May 2010. Savvy Contracting 2008

Limited (Savvy Contracting) carried on a contracting business for vineyards in the Marlborough area.

[3] Ms Pravinsinh applied for and obtained a work permit with Savvy Contracting that enabled her to work as an office manager for that company in Blenheim for a period of six months. Ms Pravinsinh also applied for residency. She was assisted in her applications by Mr Singh. The sole director of Savvy Contracting was at the time of Ms Pravinsinh's employment Sukhjinder Cheema. A recent search of the company register provides that the sole director is now Paul Jaswinder.

[4] Ms Pravinsinh believed that Mr Singh, although not a director of the business but a shareholder, in effect controlled the business. She described Mr Cheema as director *in name only*.

[5] Ms Pravinsinh did not experience any issues for the first few weeks of her employment. In June 2010 she said that Mr Singh demanded that she repay to him most of her wages leaving her with only enough to cover expenses. Ms Pravinsinh said that Mr Singh threatened her that if she did not do this he would revoke her work permit and there would be an impact on her residency application. He spoke to her at the same time about the difficult financial situation facing the company.

[6] Ms Pravinsinh says that from June 2010 following the payment into her account of her wages Mr Singh would demand that she pay him money and that this was an ongoing matter. Ms Pravinsinh said that after such a request by Mr Singh she would leave the office and go to an automatic teller machine, withdraw cash and give the withdrawn amount of cash to Mr Singh. Ms Pravinsinh said that she realised that she would have no proof of these payments aside from a cash withdrawal as shown in her bank statements and with that in mind asked Mr Singh to provide a bank account for her to make the payments into.

[7] On two occasions Ms Pravinsinh deposited money into an account that she says Mr Singh gave her. Ms Pravinsinh understood that the account was that of another employee and understood that the employee then paid Mr Singh the amount deposited. Mr Singh however usually requested that payments be in cash.

[8] Ms Pravinsinh says that for a period between 9 December 2010 and 24 March 2011 she was not paid any wages at all, notwithstanding that she continued to work. She said that when she asked for her wages she was told that her partner could support

her. Ms Pravinsinh says that her employment ended when Mr Singh took the keys to the office off her and advised her the company was moving offices but did not tell her where to.

[9] Ms Pravinsinh described her employment relationship problem as not having been paid her wages but her remedies included a claim for compensation for the way she was treated. It was agreed following discussions with Ms Pravinsinh and Ms Moses that the remedies sought were reimbursement of any monies owed, interest on that amount together with reimbursement of the filing fee.

[10] Savvy Contracting has taken no steps in relation to this matter. I am satisfied that the statement of problem, notice of direction dated 2 September 2011 and the investigation meeting notice was served at the registered office which is the same as the address for service of Savvy Contracting. Ms Moses confirmed to the Authority in writing that she had attended to such service of these documents. There was no explanation received as to why there was no appearance by the company.

[11] In the circumstances the Authority proceeded under clause 12 of Schedule 2 of the Employment Relations Act 2000 with its investigation and heard evidence from Ms Pravinsinh.

The Issues

[12] The issues for the Authority to determine are:

- Did Ms Pravinsinh pay money to Mr Singh from her wages, and if so, how much?
- Is Ms Pravinsinh owed wages for the period between 9 December 2010 and 24 March 2011?
- If it is found on the balance of probabilities that Ms Pravinsinh did pay money from her wages to Mr Singh, then did Mr Singh have or was he held out as having authority to demand payment from Ms Pravinsinh by Savvy Contracting ?
- If it is found that he did have authority then how much money is owed to Ms Pravinsinh and should there be interest awarded on this sum?

Did Ms Pravinsinh pay money to Mr Singh from her wages, and if so, how much?

[13] Ms Pravinsinh provided copies of statements from her bank account from 2 June 2010 to 2 May 2011. Each bank statements was for the period of one month. There were limited transactions recorded for each month. Ms Pravinsinh confirmed that she initially operated two accounts when she started her employment but at the material time was only operating one bank account being a Westpac Easy Access Account. Ms Pravinsinh was paid her wages each week by direct credit.

[14] I went through each of the bank statements with Ms Pravinsinh, questioning her carefully on the types of transactions that she was relying on to support payment of money to Mr Singh. Ms Pravinsinh accepted that she could not be sure about some of the smaller cash withdrawals and whether she gave money from those withdrawals to Mr Singh. I have not therefore taken those cash withdrawals into account. Ms Pravinsinh could recall a limited number of other withdrawals for smaller amounts because she said she used those sums under instructions from Mr Singh to pay other employees when there was shortfall in their payments.

[15] Ms Pravinsinh said that Mr Singh allowed her to keep about \$100 or so of her wages to pay necessary bills but that she was expected to pay him the balance in her account. She said that he knew when she had money because he knew when she had been paid. Ms Pravinsinh said that she paid Mr Singh out of fear that he would carry out his threat to revoke her work visa by advising the Department of Immigration that he did not need her any more. She was also concerned about the impact of that on her application for residency and therefore went along with Mr Singh's requests.

[16] I shall set out below the transactions that were evident from each of the bank statements provided.

2 June to 2 July 2010

[17] The bank statement for this period shows the direct crediting of five wage payments from Savvy Contracting in the combined sum of \$3,271.45 net. Ms Pravinsinh said that she paid cash in varying amounts to Mr Singh. The statement records a withdrawal of cash from an automatic teller machine on 15 June 2010 for \$800. Ms Pravinsinh says that she paid that amount to Mr Singh. 15 June 2010 was a date following two wage payments to her by Savvy Contracting and after the sum of \$800 was withdrawn there was a balance in Ms Pravinsinh's account of \$18.58.

[18] After the third payment of wages the bank statement records a cash withdrawal on 22 June 2010 for \$640 that Ms Pravinsinh says she paid to Mr Singh. Following that withdrawal there is a balance in the account of \$2.41.

[19] After the fourth wage payment there is a further cash withdrawal of \$600 on 29 June 2010, a sum that Ms Pravinsinh says she paid to Mr Singh. Following that withdrawal there is a balance in the account of \$25.98.

[20] After the fifth deposit of wages during this period Ms Pravinsinh transferred the sum of \$600 to her partner. She said that she did this to protect her money as much as she could from Mr Singh. The bank statement clearly records this transfer as a payment to her partner referring to his name. There is no other cash withdrawal after this payment shown in the statement.

[21] The total amount of cash that Ms Pravinsinh says she paid to Mr Singh for this period is \$2,040.00.

2 July to 2 August 2010

[22] The bank statements for this period show four payments of wages from Savvy Contracting in the combined sum of \$2,581.16 net. Ms Pravinsinh says that after the two wage payments on 8 and 15 July 2010 she was instructed by Mr Singh to make payment to other employees who had a shortfall in their wages and for this reason she withdrew cash in the sums of \$60 on 16 July and \$120 on 21 July. Ms Pravinsinh says that she then withdrew a further cash amount of \$800 on 21 July 2010 and paid that sum to Mr Singh.

[23] There was a further transfer of funds by Ms Pravinsinh to her partner on 23 July following her wage payment on 22 July and a zero balance reflected as a result in the account.

[24] The total amount of cash that Ms Pravinsinh says that she either paid to employees on the instruction of Mr Singh or to Mr Singh himself for this period is \$980.

2 August 2010 to 2 September 2010

[25] The bank statement for this period shows five wage payments from Savvy Contracting in the combined sums of \$3,267.45 net. Ms Pravinsinh says that

following the payment of wages to her on 5 August 2010 she withdrew a cash sum from an automatic teller machine at the instruction of Mr Singh in the sum of \$400 and paid that sum to him. There were then two other wage deposits on 12 and 19 August 2010 before Ms Pravinsinh says she was instructed by Mr Singh to make a further cash payment to him and duly did on 20 August 2010 in the sum of \$640.

[26] A further payment of wages was then direct credited into her account on 26 August before she says she was instructed to make a further cash payment to Mr Singh that she duly did by withdrawing \$460 on 1 September and paying that to him. That left a balance in the account of \$18.13 before a further wage payment was made on 2 September leaving a closing balance of \$662.94.

[27] Ms Pravinsinh says that the total amounts of cash that she paid to Mr Singh for this period is \$1,500.

2 September to 1 October 2010

[28] The bank statement for this period shows four wage payments in the combined sum of \$2,611.16 net.

[29] Before the first payment of wages there is a cash withdrawal from a automatic teller machine on the statement of \$740. Ms Pravinsinh says that this sum was paid to Mr Singh after he requested she pay him. A balance was then left in the account of \$0.46. There were then two further payments of wages on 9 and 16 September 2010 and no other transactions for that period.

[30] On 20 September 2010 Ms Pravinsinh says that Mr Singh again asked her for money. This time Ms Pravinsinh said that she requested a bank account in which to deposit the money so that she could have proof about what was going on. The transaction type as shown in the bank statement is referred to as “BP” a bill payment. Alongside the transaction it records the other party as “Amrik Singh” and refers to the transaction particulars as “salary one time payment”. Ms Pravinsinh says that she deposited \$1,3000 into the account number Mr Singh gave her. That is confirmed by the bank statement. She said that it transpired the account number was that of another employee and that that employee then gave the money to Mr Singh. Ms Pravinsinh said that other employees at the vineyard were too frightened to come forward with issues they had with their employment and/or to support her in her claim.

[31] On 23 September and 30 September 2010 there were two further payments of wages. Ms Pravinsinh says that she was again by Mr Singh to pay money to him and she paid him a sum in cash that the statement shows as withdrawn on 30 September 2010 of \$500. As at 1 October 2010 there was a closing balance in the account of \$429.36.

[32] The total amount Ms Pravinsinh says that she paid Mr Singh over this period is \$2,540.

1 October to 2 November 2010

[33] The bank statement for this period shows four payments of wages in the combined sum of \$2,714.48 net.

[34] Before the first of the wage payments on 7 October 2010 Ms Pravinsinh says that she paid to Mr Singh at his request on 6 October a cash sum of \$400 leaving a balance in the account of \$0.36.

[35] Following the wage payment on 7 October 2010 Ms Pravinsinh said that she again asked for a bank account to deposit money into when Mr Singh requested payments. She said that she was given another employee's account whose name is recorded on the bank statement as *Harpal Singh*. The statement shows a payment into his account on 11 October 2010 of \$500. Ms Pravinsinh said that she was aware that the employee then gave the money to Mr Amrik Singh. Ms Pravinsinh says that after a further wage payment on 14 October 2010 at Mr Singh's request she paid him \$500 cash on 15 October 2010 and \$300 cash on 18 October 2010. After wage payments on 22 October and 29 October 2010 Ms Pravinsinh says that she withdrew a further \$500 cash and paid this sum to Mr Singh on 29 October 2010. This left a closing balance in the account of \$771.09.

[36] The total amount Ms Pravinsinh says she paid Mr Singh over this period is \$2,200.

2 November to 2 December 2010

[37] The bank statement for this period shows three payments of wages in the combined sum of \$2,035.86 net. Ms Pravinsinh says that between the payment of the wages on 4 November and the next payment of wages on 11 November 2010 she paid

Mr Singh two cash payments. The first was a sum of \$500 on 4 November 2010 and the second a sum of \$500 on 5 November 2010.

[38] The bank statement then shows a further crediting of wages of 11 and 25 November. Ms Pravinsinh says that as requested by Mr Singh she withdrew \$800 and paid this to him on 26 November 2010. This left Ms Pravinsinh with a balance in her account of \$353 but her account was then credited with a further payment of wages of \$678.62 on 2 December 2010.

[39] The total amount of cash that Ms Pravinsinh says she paid to Mr Singh over this period is \$1,800.

2 December to 31 December 2010

[40] The bank statement for this period shows one payment of wages in the sum of \$678.62 on 9 December 2010. Ms Pravinsinh says that on 3 December at Mr Singh's request she withdrew cash amounts from her account in the respective amounts of \$100, \$160 and \$320 and paid these sums to three other employees who were owed money by the company. Ms Pravinsinh says that after she received her wages on 9 December 2010 she then paid Mr Singh a further sum as he requested of \$420 cash. Ms Pravinsinh says that although she carried on working for Savvy Contracting she did not receive any other payment of wages until 24 March 2011.

[41] The total amount of money that Ms Pravinsinh says that she paid to other employees at the instruction of Mr Singh or to Mr Singh over this period is \$1,000.

31 December 2010 to 2 March 2011

[42] The two bank statements provided for this period confirm that no money came into or out of Ms Pravinsinh's account. This is consistent with Ms Pravinsinh's evidence that she was not paid for this period although she said that she carried on working.

[43] During the Authority's investigation meeting Ms Pravinsinh referred to sending emails during this period requesting wages. I asked for these to be supplied to the Authority and they were duly supplied after the end of the investigation meeting. The first email is dated 18 February 2011 and was sent to Adam Sangha and Mr Singh. Ms Pravinsinh says in that email; *Still I am waiting for my salary so*

whats you up to, I can say I am tired to say you guys often. If you want to do anything than I have to do something, I feel it I am like beggar in front you.

[44] There was no response provided to that email. Ms Pravinsinh sent other emails to both Mr Cheema and Mr Singh.

[45] I have read the emails carefully although found the language used to be somewhat confusing. It is clear from the emails that Ms Pravinsinh is asking for her wages to be paid and refers to three weeks when she was not paid in December 2010 and there is reference to weeks in February 2011.

[46] The emails are consistent with Ms Pravinsinh's bank accounts that support no direct crediting of her wages between 9 December 2010 and 24 March 2011, a period of 14 weeks. Ms Pravinsinh advised that she was only able to exist without payment for this period by relying on her partner's income. I am left unclear however about the month of January as it is not referred to in the emails. I would have expected there to have been reference to that month as December had specifically been referred to in the February email. I do not therefore include in my calculation of unpaid wages the month of January but reserve leave for further information to be provided within the next two weeks if payment was not made for that month. I accept though that there was no payment of wages for three weeks in December 2010, four weeks in February and the first three weeks of March 2011. That is a total of ten weeks.

[47] Ms Pravinsinh's annual salary was \$42,640. Gross weekly payments therefore were \$820 gross. For a period of 10 weeks therefore the gross salary owing to Ms Pravinsinh is $\$820 \times 10 = \$8,200$ gross. Leave is reserved for Ms Pravinsinh to provide further information if wages remained unpaid for January 2011.

2 March 2011 to 1 April 2011

[48] Wages were paid on 24 and 31 March 2011 during this period in the combined sum of \$1,357.24. Ms Pravinsinh says that on 31 March 2011 after the second wage payment was made Mr Singh again asked her to pay him money and she withdrew a sum of \$600 from an automatic teller machine and gave that sum to him.

[49] The total amount Ms Pravinsinh says that she paid Mr Singh during this period was \$600.

1 April 2011 to 2 May 2011

[50] Ms Pravinsinh was paid wages for this period on 6 April, 14 April and 21 April in the combined sum of \$2,035.86.

[51] She says that after the first of the wage deposits on 6 April Mr Singh asked again that she pay him money and she withdrew cash and paid him \$600 on 6 April 2011 and then a further \$560 on 8 April 2011. This left a balance in her account of \$6.93.

[52] Following the next payment of wages of 14 April 2011 Ms Pravinsinh said that she was again asked for money by Mr Singh and paid him the sum of \$500 on 18 April 2011 leaving the balance in her account of \$9.63. Ms Pravinsinh says that after the final wage payment she was asked by Mr Singh to pay cash to him and paid him a further sum of \$600 on 28 April 2011. That was the last amount that Ms Pravinsinh says she paid Mr Singh and she did not receive any further payment from the company for wages.

[53] The total amount that Ms Pravinsinh says that she paid Mr Singh during this period is \$2,260.

Conclusion

[54] This is an unusual case. The Authority needs to be satisfied on the balance of probabilities that the payments were made to Mr Singh by Ms Pravinsinh. I am satisfied having heard the evidence that Ms Pravinsinh placed a lot of importance on her work permit and particularly her residency application. She expressed that in terms of the residency application she did not want to be deprived of the benefit of all her hard work with Savvy Contracting.

[55] There is a pattern in the bank statements that does support Ms Pravinsinh withdrawing similar sums of money after wages had been deposited. The amounts withdrawn do appear to have some bearing on what the balance is in her account and that is consistent with her evidence. There is also some support for the payments being made from the deposits into the two bank accounts particularly the one referring to Mr Singh. There was no other apparent explanation for the deposits. There is support also found in an email sent on 28 February 2011 to Mr Cheema, Mr Singh and Mr Sangha by Ms Pravinsinh. This email followed a warning letter by the company

accusing Ms Pravinsinh, amongst other matters, of blackmailing the company. In the email Ms Pravinsinh denies that and says *but the company management blackmail me, torcher me many times.*

[56] I found Ms Pravinsinh to be a credible witness. She readily conceded that she could not recall the reason for the smaller withdrawals of cash. Ms Pravinish knew that Mr Singh's request for payment of her wages was unlawful but she felt, I accept because of matters relating to residency, that she believed she had to keep paying him. Consistent with knowledge that the demands were unlawful, after her employment ended she went to the Police and went again after the statement of problem was lodged with the Authority. Ms Pravinsinh confirmed she provided a statement to them. Ms Pravinsinh said that the matter was not considered a criminal matter by the Police.

[57] I am satisfied on the balance of probabilities having heard the evidence that Ms Pravinsinh did pay money from her wages to Mr Singh in the sums I have set out because of his threats.

[58] I find that the amount Ms Pravinsinh paid to Mr Singh over the course of her employment was \$14,920.

[59] I have found that Savvy Contracting failed to pay Ms Pravinsinh wages for a period of 10 weeks between 9 December 2010 and 24 March 2011. She is owed for that period the sum of \$8,200 gross. I have reserved leave for Ms Pravinsinh to return to the Authority within two weeks if there is further information about non payment of wages for January 2011.

[60] There is no issue that the company is liable for payment of the unpaid wages. The Authority however needs to be satisfied in relation to Mr Singh he was held out by Savvy Contracting as having authority on its behalf to demand repayment of part or most of Ms Pravinsinh's wages. If not then Ms Pravinsinh's action would be against Mr Singh personally and her employer would not be liable for his actions.

Did Mr Singh have or was he held out as having authority to demand payment from Ms Pravinsinh by Savvy Contracting?

[61] I carefully questioned Ms Pravinsinh about this issue. I am satisfied firstly that Mr Singh was held out by Savvy Contracting as being in a position of authority within the company and someone who had considerable control over the business.

Ms Pravinsinh said that she recalled him having permission to sign off on employee payments. Mr Singh was the person who spoke to Ms Pravinsinh about the business and advised her that there was a position for her. Ms Pravinsinh included Mr Singh in any communication she had with the company.

[62] I accept Ms Pravinsinh's evidence as more likely than not that Mr Cheema, the sole director, had direct knowledge that she was being asked to pay a large percentage of her wages back to Mr Singh. She said that on some occasions when Mr Cheema was in the office he would tell her that Mr Singh wanted her to pay him money. Ms Pravinsinh described Mr Cheema as *knowing everything about what took place*. I find that is more likely than not in this case. Mr Singh was held out by the company as having apparent authority to demand the repayment of money from Ms Pravinsinh's wages including demanding money to cover other employee's shortfalls in wages.

[63] In conclusion then I am satisfied that Savvy Contracting held Mr Singh out as a person who had considerable control and authority within the company. Furthermore I find that the sole director at material time Mr Cheema was aware that Mr Singh requested money and was being paid money by Ms Pravinsinh from her wages and he was held out as having the authority to demand that money.

[64] I find therefore that Savvy Contracting 2008 Ltd as Ms Pravinsinh's employer is liable to reimburse money paid to Mr Singh by Ms Pravinsinh from her wages following threats in relation to her work permit and residency application.

What is owed to Ms Pravinsinh?

[65] Ms Pravinsinh is owed the sum of \$8200 gross being unpaid wages for a ten week period. Leave is reserved for Ms Pravinsinh to return to the Authority within two weeks if wages are owing for January 2011.

[66] I order Savvy Contracting 2008 Limited to pay to Raj Meghana bahen Pravinsinh the sum of \$8200 net being monies owed for unpaid wages.

[67] Ms Pravinsinh is owed the sum of \$14,920 being the money she was required to pay back to the company from her net wages.

[68] I order Savvy Contracting 2008 Limited to pay to Raj Meghana Bahen Pravinsinh the sum of \$14,920 without deduction.

Interest

[69] I find that Ms Pravinsinh is entitled to interest on the combined gross and net amounts set out above of \$23,120 at the rate prescribed under s.87(3) of the Judicature Act 1908 being 5 % per annum from the date that proceedings were lodged with the Authority on 15 July 2011 to the date of payment.

Costs

[70] Ms Pravinsinh is entitled to be reimbursed with her filing fee of \$71.56 and I so order.

Helen Doyle
Member of the Employment Relations Authority