

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2024] NZERA 84
3297680

BETWEEN QUENTIN RODGERS
Applicant

AND JEFFREY WRIGHT
Respondent

Member of Authority: Lucia Vincent

Representatives: Paul Mathews, counsel for the Applicant
Jenny Beck, counsel for the Respondent

Investigation Meeting: 4 November 2024 By AVL

Submissions Received: 4 November 2024 with further information received up
to 26 November 2024

Determination: 17 February 2025

DETERMINATION OF THE AUTHORITY

What is the Employment Relationship Problem?

[1] Mr Rodgers seeks a compliance order against Mr Wright for the failure of J.S. Wright Contracting Limited (In Liquidation) to pay certain amounts ordered by the Authority.¹ Unable to obtain payment from the company, Mr Rodgers seeks to recover payment from Mr Wright as a person involved in a breach of employment standards in terms of s 142Y of the Employment Relations Act 2000 (Act).

[2] Mr Rodgers is owed \$1,550.00 (net) in wages arrears and \$124.00 (net) holiday pay (a total of \$1,674.00 (net)). He also asks for a penalty, interest and costs.

¹ *Rodgers v J.S. Wright Contracting Limited (In Liquidation)* [2024] NZERA 274.

[3] Mr Wright offered to pay the sum owing to Mr Rodgers by way of weekly payments of \$20.00 starting on 14 August 2024 and to confirm this in a consent determination.² Unfortunately, the parties were unable to reach agreement.

What are the issues?

[4] The issues for determination were:

- (a) Is Mr Wright a person involved in a breach for the purposes of s 142W of the Act?
- (b) Has there been a default by Mr Rodgers' former employer J.S. Wright Contracting Limited (In Liquidation)?
- (c) Should the Authority order Mr Wright to pay the amounts owing to Mr Rodgers plus interest, a compliance order, a penalty and costs?

How did the Authority investigate?

[5] The Authority held an investigation meeting on 6 August 2024 by AVL. The Authority adjourned the matter for the parties to discuss whether they could reach agreement on a consent order which resulted in the 6 August 2024 letter.

[6] The Authority held a further investigation meeting on 4 November 2024 to hear evidence on oath or affirmation from Mr Wright and from Mr Rodgers. The parties' representatives made oral closing submissions. Further information was received following the investigation meeting.

[7] As permitted by s 174E of the Act this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Is Mr Wright a person involved in a breach?

[8] Prior leave was given to Mr Rodgers to recover his wages and holiday pay from Mr Wright personally to the extent his employer defaulted in payment to him. A finding was made which was supported by further evidence provided during the investigation meeting that Mr Wright was sole director and shareholder at all material times, managing

² Letter from Jenny Beck Law to Mr Mathews dated 6 August 2024.

the company, dealing with people working for the company (such as Mr Rodgers), and responsible for financial, employment and business decisions.

[9] The company breached employment standards by failing to pay Mr Rodgers his wage arrears and holiday pay. Mr Wright was directly involved in that breach as an officer of the company managing its business, people and finances.

[10] Mr Wright is a person involved in a breach of employment standards for the purposes of s 142W and s 142Y of the Act.

Has there been a default by the company?

[11] J.S. Wright Contracting Limited (In Liquidation) has not paid the wage arrears or holiday pay owing to Mr Rodgers. The Liquidator for the company has confirmed there are no funds to make payment. The company has breached employment standards.

[12] I am satisfied the Authority should order Mr Wright to pay Mr Rodgers his wage arrears and holiday pay.

Should the Authority order Mr Wright to pay the amounts owing to Mr Rodgers?

[13] Although Mr Rodgers has had a determination in his favour, he has not yet enjoyed the fruits of his success. The Authority should make an order for Mr Wright to pay the amounts owing of wage arrears of \$1,550.00 (net) and holiday pay of \$124.00 (net).

[14] Mr Wright provided evidence showing his personal financial situation means he cannot afford to pay the amounts owing in one lump sum immediately. He offered to pay \$20.00 per week from 14 August 2024 until the sum was paid in full. His willingness to do so was driven partly by attempts by him to avoid bankruptcy due to a wider commercial context in which he had personally guaranteed a number of debts owed by the company.

[15] In the unique circumstances of this case, I consider it appropriate to approach the order for payment pragmatically to allow an extended timeframe to 14 August 2025 for Mr Wright to make payment to Mr Rodgers in full. I encourage the parties to discuss a payment regime or earlier payment if a change in circumstances allows.

Should the Authority award interest?

[16] The Authority has the power to award interest in any matter involving the recovery of any money.³ The company ought to have paid Mr Rodgers his wage arrears and holiday pay following his dismissal on 26 September 2023. I award interest on the wage arrears and holiday pay from this date to the date of this determination of \$141.52.⁴

Should the Authority make a compliance order?

[17] I am not satisfied the Authority should make a compliance order in relation to *Rodgers v J.S. Wright Contracting Limited (In Liquidation)* [2024] NZERA 274. That determination did not contain an order for payment by Mr Wright who was not a named party.

Should the Authority order a penalty?

[18] Only a Labour Inspector may apply for a penalty against a person involved in a breach of employment standards.⁵ I decline to award a penalty.

Summary of orders

[19] I order Mr Wright pay Mr Rodgers on or before 14 August 2025:

- (a) Wage arrears of \$1,550.00 (net);
- (b) Holiday pay of \$124.00 (net); and
- (c) Interest of \$141.52.

Costs

[20] Mr Rodgers seeks costs. Mr Wright received an award of legal aid for these proceedings.⁶ The Legal Services Act 2011 does not allow for an order for costs against

³ Employment Relations Act 2000 (Act), clause 11, schedule 2.

⁴ Calculated using the civil debt interest calculator at [Civil debt interest calculator | New Zealand Ministry of Justice](#).

⁵ Act, s142X.

⁶ Mr Wright's counsel advised the Authority and Mr Rodgers of in the Statement in Reply dated 20 May 2024.

an aided person in a civil proceeding unless satisfied exceptional circumstances exist.⁷ I am not satisfied any such circumstances exist. I make no order for costs.

Lucia Vincent
Member of the Employment Relations Authority

⁷ Legal Services Act 2011, s 45(2).