

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2020] NZERA 315
3059293

BETWEEN ADITYA SAMMETA
 Applicant

AND CALL-A-TECH (2016) LIMITED
 Respondent

Member of Authority: Michael Loftus

Representatives: Applicant in person
 Sandeep Vankadari, for the Respondent

Investigation Meeting: By telephone conferences on 18 June 2020 and 13 July
 2020 and on the papers.

Date of Determination: 12 August 2020

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This is a claim for unpaid wages and holiday pay with the applicant, Aditya Sammeta, also seeking reimbursement of a *certification fee*.

[2] Call-A-Tech (2016) Limited (Call-A-Tech) accepts the money has not been paid but asserts there are good reasons for that.

[3] After two telephone conferences, and during the second, the parties agreed the matter be determined on the basis of what was said during those discussions and on the papers.

Discussion

[4] Call-A-Tech is involved with data distribution equipment and is a provider of services to, and as a subcontractor for, others in the industry.

[5] Mr Sammeta was employed by Call-A-Tech between March 2018 and February 2019. His terms of employment were contained in a written employment agreement which does not contain reference to the payment of wages or have a clause facilitating deduction there from.

[6] Mr Sammeta claims he was not paid for his final weeks, 27 Jan to 19 Feb 2019, and did not receive holiday pay on cessation. He says he requested payment more than once, and attached texts and e-mails evidencing that, but failed to receive a response let alone payment.

[7] Mr Sammeta says he is owed \$2,240 in unpaid wages plus holiday pay of \$1,493. In addition he seeks reimbursement of a *certification fee* of \$800.

[8] With respect to the certification fee the evidence is Call-A-Tech performs work for Chorus NZ Limited (though possibly as a sub-contractor to a sub-contractor) which requires technicians hold various certifications in order they be allowed to do that work. The fee is payment for that certification which, Mr Sammeta asserts, Call-A-Tech agreed it would reimburse.

[9] Mr Vankadari, on behalf of Call-A-Tech, advises a group of employees, including Mr Sammeta, were guilty of various misdemeanours which led to Call-A-Tech losing the contract for which they were employed and this led to Call-A-Tech ceasing to trade. Mr Vankadari accepts Mr Sammeta has not been paid but claims neither he nor his colleagues should be paid *for the following reasons*:

- (a) *One of the employee from the organization has stolen the banking details and have withdrawn illegally around 11,000 NZD. Which is supposed to be paid as salary for the employees.*
- (b) *Aditya have never contacted me over email or phone but was in direct contact with the same person who has stolen the money.*
- (c) *The tools that are used by the company which worth more than 30K including a van has been removed from the site where Aditya and other employees had access to.*

- (d) *There has been a police complaint regarding this and they are looking into both the aspects.*
- (e) *The items that are stolen have not yet been retrieved and neither the amount that is illegally withdrawn is found too yet.¹*

[10] The e-mail also complains about a vehicle the employees had used. It had been reduced to a *very bad condition* and then repossessed by a finance company.

[11] During both telephone conferences and in written input provided after the first call, Mr Vankadari repeated accusations of employee wrongdoing and theft.² The problem he faces, at least in respect to this claim, is he does not suggest Mr Sammeta is the party who stole from him and otherwise caused loss. He is saying no more than he thinks Mr Sammeta knows who that party is and will not pay till Mr Sammeta convinces that person to admit guilt and return that which s/he stole.

[12] This is, I have to say, is a tenuous position. One cannot hold an employee's pay to ransom in exchange for information about wrongdoing where there has been no suggestion he is in fact the guilty party (at least in respect to the more serious allegations) and about which he may have no knowledge. I told Mr Vinkadari so during the telephone conferences and invited him to provide something more substantial that might give his defence a chance. He failed to do so.

[13] The simple fact is wages are payable and no deduction is permissible without written authority.³ Call-A-Tech can produce no evidence of such authority. Nor does it go so far as to even suggest it exists. The wages and holiday pay must, in such circumstances, be deemed owing.

[14] That raises the question of how much? Section 132 of the Employment Relations Act 2000 (the Act) provides that in the absence of time and wage records I may accept the claim unless the respondent can prove the claim wrong. In this instance the claim is well quantified; Call-A-Tech failed to provide wage record despite undertaking to do so during the first

¹ E-mail doubling as the statement in reply dated 28 May 2019

² E-mail Vankadari to ERA and Sammeta dated 6 July 2020

³ Sections 4 and 5 of the Wages Protection Act 1983

telephone conference, and there is no suggestion the claim is in fact wrong. It follows the amount sought will be ordered.

[15] That then raises the issue of reimbursement of the certification fee. Mr Sammeta said he had a document confirming it was payable and undertook to provide a copy. He failed to do so but, that said, Mr Vankadari did not, when the issue was discussed, challenge Mr Sammeta's assertions or suggest the money was not owing. Having balanced what I heard I conclude this amount is also due.

[16] Turning now to costs. As Mr Sammeta was self-represented recoverable costs are limited to the Authority's filing fee. That is payable.

Conclusion and Orders

[17] For the above reasons I conclude Mr Sammeta has made out his claims. As a result I make the following orders.

[18] The respondent, Call-A-Tech (2016) Limited, is to pay the applicant, Adyita Sammeta:

- (a) \$3,733 (three thousand, seven hundred and thirty three dollars) gross being unpaid wages plus holiday pay; and a further
- (b) \$800 (eight hundred dollars) being reimbursement of the certification fee; and a further
- (c) \$71.56 (seventy one dollars and fifty six cents) being reimbursement of the Authority's filing fee.

[19] Payment of above sums is to be made no later than 4.00pm on Wednesday 26 August 2020.

[20] In closing I caution the respondent that failure to comply with the above orders may result in further consequences. Should such a failure be pursued in the Employment Court they potentially include the imposition of fines and the sequestration of property.⁴ Conversely a

⁴ Sections 139 and 140 of the Employment Relations Act 2000

certificate of determination may be obtained and the matter pursued in the District Court which might ultimately lead to liquidation of the company.⁵

[21] Finally it should be noted that as the bulk of the above orders relate to outstanding wages there is a potential liability might, should payment not be made, transfer to Mr Vankadari in his personal capacity pursuant to ss 142W and 142Y of the Act. Of that, he should be aware.

Michael Loftus
Member of the Employment Relations Authority

⁵ *Denyer v Peter Reynolds Mechanical Ltd t/a The Italian Job Service Centre* [2015] NZEmpC41 at [42] and *Broeks v Ross EmpC* Auckland AC36A/09, 11 November 2009 at [5]