

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 460

3178979

BETWEEN

MOHAMMAD NAZIB BIN
SAPTU
Applicant

AND

BARTLE GROUP LIMITED
Respondent

Member of Authority: Alastair Dumbleton

Representatives: Applicant in person
Paul Robertson, counsel for the Respondent

Investigation meeting: 24 May 2023 at Auckland

Determination: 18 August 2023

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] In July 2022 a statement of problem was lodged in the Authority by Mohammad Nazib Bin Saptu. From July 2020 until June 2022 he had worked as an employee for Bartle Group Ltd (BGL), as a Tow Truck Operator/Winch & Lift Vehicle Recovery Operator.

[2] Mr Saptu applied to have several issues he had about his pay and conditions investigated and resolved. Those issues included payment for a day off in lieu he was entitled to whenever he worked on a public holiday, and payment of accumulated untaken annual leave.

[3] BGL in its statement in reply denied that Mr Saptu had not been paid properly for all his work from 2020 until 2022 when he resigned.

[4] The parties met with a mediator and tried to resolve Mr Saptu's issues on their own terms but were unable to. Mr Saptu attended an investigation meeting at which he addressed his concerns and answered questions from counsel for BGL, Mr Robertson, and the Authority. Kate Bartle a director of BGL participated in the same way.

[5] The parties agreed that this matter was best approached by having the Authority review with them the records of BGL and consider any advice or explanations they were able to give.

[6] This determination is given in accordance with s 174E of the Employment Relations Act 2000 (the ER Act) and does not therefore record all the evidence or information considered by the Authority, or submissions received.

[7] Mr Saptu said he had worked 66 hours a week, including public holidays, and sometimes on his annual holidays. His pay increased from \$22 per hour to \$31 per hour over his period of employment.

[8] The employer produced the individual employment agreement (the IEA) entered into with Mr Saptu and subsequently amended or varied, particularly after the onset of the Covid pandemic. BGL also produced wage, time and leave records covering the period of employment.

[9] The documentation required to be created and kept by the ER Act and Holidays Act 2003 appears to be thorough and complete.

[10] An IEA was signed on 20 July 2020 by Mr Saptu and Ms Bartle. A few days later on 22 July, a written variation was signed. It referred to limitations on the capacity BGL had to operate under Covid-19 restrictions, and it allowed for a change of Mr Saptu's duties and responsibilities and a reduction of his hours of work.

[11] On the same date, Mr Saptu agreed in writing to use any paid leave entitlements he had instead of working on pay.

[12] Pay advice for 26 July 2020 shows that Mr Saptu was paid a COVID-19 Wage Subsidy topping up his pay to what he might ordinarily have received for working.

[13] A new IEA was signed on 20 November 2020. An addendum to it of the same date increasing the rate of pay and providing for repayment of recruitment, immigration and training expenses has not been put in issue.

[14] Pay advice for 31 January 2021 shows payment at T1½ for a public holiday on which Mr Saptu had worked.

[15] When Mr Saptu resigned with notice given by email to Ms Bartle on 17 June 2022, he expressed dissatisfaction with his conditions and work environment, but raised none of the issues set out in his statement of problem.

[16] His final pay in June 2022 included amounts for hours worked, untaken annual leave, sick leave, and alternative holidays (days off in lieu). BGL provided a breakdown for the period of it, which ended on 19 June 2022. The records also included an annual leave report of the same date. It includes dates of 'paid top up COVID lockdown', paid up annual leave and annual leave 'cash up' Mr Saptu had requested in writing.

[17] The sample of payslips and the final wage breakdown provided to the Authority establishes that Mr Saptu was paid his entitlements due under his IEA as amended, and the Holidays Act.

Conclusion

[18] The Authority concludes and determines that there is no basis for making any orders to resolve any of the issues raised by Mr Saptu.

Costs

[19] At BGL's request, the question of costs is reserved.