

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2021] NZERA 30
3089492

BETWEEN AHMAD FAROUQ SHALALDEH
Applicant

A N D LAZYWORM APPLICATIONS LIMITED
Respondent

Member of Authority: David G Beck

Representatives: Applicant in person
Giuliana Petronelli, counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: 18 September 2020 from the Applicant
15 September 2020 from the Respondent

Date of Determination: 27 January 2021

DETERMINATION OF THE AUTHORITY

Employment relationship problem - outstanding issue

[1] On 5 August 2020 the Authority investigated Ahmad Farouq Shalaldeh's claim that he had been unjustifiably dismissed during a restructuring of Lazyworm Applications Limited's business and that he was owed remuneration for unpaid overtime. The Authority in a determination of 24 August 2020 concluded the following:

- a. Ahmad Farouq Shalaldeh was unjustifiably dismissed from his employment with Lazyworm Applications Limited and is owed additional remuneration for overtime worked and for work on public holidays.

b. Lazyworm Applications Limited must come to an agreement on remuneration unpaid (minus \$2,000) or the matter will be further determined by the Authority and in addition Lazyworm Applications Limited must pay Mr Shalaldeh the sums below:

- i. \$20,192.30 gross lost wages;
- ii. \$25,000 pursuant to s 123(1)(c)(i) of the Act;
- iii. \$71.56 as a filing fee.

[2] The parties have subsequently been unable to reach agreement on the outstanding issue of unpaid remuneration owed to Mr Shalaldeh for additional work undertaken outside his contracted 40 hours per week and have asked the Authority to determine the matter on information they subsequently submitted after the investigation meeting.

[3] In the determination of 24 August 2020 I directed that the parties come to an agreement on the quantification of such extra hours worked using parameters outlined below (a methodology that the respondent subsequently accepted). In summary I found :

Mr Shalaldeh has claimed a sum based upon an additional 10 hours per week but admitted that this is only an estimate. In all of the circumstances, I am prepared to accept that Mr Shalaldeh has a claim for some unpaid hours that went beyond reasonable overtime and I fix this amount at five hours per week at an ordinary hourly rate to be calculated taking Mr Shalaldeh's annual salary as a divisor for the period of the time he worked on the Amax project to not exceed over two years. Once that calculation is arrived upon I find that Lazyworm is reasonably entitled to deduct \$2,000 off the final sum in recognition of the bonus they paid to Mr Shalaldeh for his contribution to the project in question.¹

Quantification methodology

[4] Given the above the only outstanding issue is the period of time I consider it is reasonable to award Mr Shalaldeh five hours per week at his ordinary hourly time rate. For this purpose I have calculated the hourly rate to be \$33.65 based on an annual salary of \$70,000.

¹ *Ahmad Farouq Shalaldeh v Lazyworm Applications Limited* [2020] NZERA 331, at [75] – [77].

Mr Shalaldeh's claim

[5] Mr Shalaldeh has claimed that his unpaid hours amounted to 10 hours per week for 199 weeks amounting to \$66,963. However, Mr Shalaldeh did not provide a breakdown of these hours and as stipulated in the determination the period I suggested as reasonable could not exceed two years (a potential claim of \$32,304 being two years minus eight weeks annual leave).

Lazyworm Applications Limited's response

[6] Lazyworm although having no wage, time or holidays records, provided a spreadsheet detailing alleged hours worked based upon hours allocated to each task undertaken by Mr Shalaldeh and the charge out rate for such to clients. A summary was provided that claimed for the period between 14 August 2017 and 26 February 2019 Mr Shalaldeh worked 104.5 additional hours at an hourly rate of \$33.65 being \$3,516.43.

Assessment

[7] The problem with both parties' positions is that they have limitations – Mr Shalaldeh has simply estimated his claim without supporting evidence and Lazyworm has made an estimate based upon incomplete data that fails to record the unsocial hours Mr Shalaldeh undertook and is only limited to 'billable' hours. Both parties have ignored the determination stricture that the only outstanding issue was the length of time that my finding that a fair estimate of five hours per week should run to.

Finding

[8] Inevitably I am obliged to calculate a compromise between the two positions outlined above as they have both asked the Authority to determine the matter in the absence of complete records. If I use the period advanced by Lazyworm of between 14 August 2017 to 26 February 2019 and take holiday breaks into account I estimate this to be sixty eight weeks that based upon five hours per week amounts to \$12,410. By contrast, Mr Shalaldeh is impliedly claiming two years as his divisor that, when you deduct eight weeks for annual leave, amounts to ninety six weeks at five hours per week being \$16,152.

[9] In all of the circumstances I consider a fair amount to be \$15,000 that is to be reduced as per the determination of 24 August 2020, by \$2,000 to account for a one-off bonus paid to Mr Shalaldeh.²

Outcome

[10] **Lazyworm Applications Limited is to pay Ahmad Farouq Shalaldeh the sum of \$13,000 (gross) pursuant to s 123(1)(b) Employment Relations Act 2000 to compensate for additional hours Mr Shalaldeh worked whilst in their employ.**

Costs

[11] Mr Shalaldeh represented himself so no costs issue arises.

David G Beck

Member of the Employment Relations Authority

² At [77].