

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 339
5308034

BETWEEN LALIT SHARMA
 Applicant

AND MONOPOLIZ SUPPLIES
 LIMITED
 Respondent

Member of Authority: Alastair Dumbleton

Representatives: Applicant in person
 Salim Shaikh, advocate for Respondent

Investigation Meeting: 6 September 2010, 17 March and 18 April 2011

Determination: 28 July 2011

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant Mr Lalit Sharma commenced a claim in the Authority to recover wages and holiday pay for a period of five months when he was employed by the respondent company, Monopoliz Supplies Ltd.

[2] As a respondent party and therefore under a requirement to lodge a statement in reply to the claim, Monopoliz did not do so and neither did it apply for leave to reply out of time. The company has nevertheless been heard through its director Mr Salim Shaikh, who gave evidence to the Authority.

[3] Mr Sharma claims that he was employed in the APNA Bazaar business owned by Mr Shaikh's company, Monopoliz. He claims that he commenced work as a shop assistant in early May 2009, working about 20 to 22 hours per week at an agreed hourly rate of \$12.50. He claims he signed an employment agreement although a copy was not given to him and it has not been produced to the Authority.

[4] Mr Sharma claims that for his work all he received was two payments of cash and he also had his rent paid by Mr Shaikh. He claims that by the time he ceased employment in about November 2009 salary of \$7,808 and holiday pay of \$625 was owed. After allowing for the rent paid and the cash payments received he claims to recover a total of \$6,913.

[5] Mr Shaikh denies that Mr Sharma was ever employed by Monopoliz. He claims that Mr Sharma remained employed by a previous owner of the business after Monopoliz bought it in May 2009. While for several months after the sale and purchase he had regularly seen Mr Sharma in and about the premises, he thought Mr Sharma was there to continue his work for the vendor.

[6] There is no dispute between the parties that after coming to New Zealand from India in 2008 to study, Mr Sharma found employment for about 20 hours per week in the APNA Bazaar, a business trading in Sri Lankan and Indian goods, groceries and spices. The owner of it then was Clean Deal Ltd.

[7] A director of Clean Deal, Mr Kamal Mobin, gave evidence at the investigation meeting after being summonsed by the Authority. Mr Mobin produced a number of documents, including an agreement for sale and purchase of a business and a stock take list.

[8] I find from this evidence that Clean Deal Ltd trading as APNA Bazaar sold the business to Monopoliz Supplies Ltd on 30 April 2009. Possession date was agreed to be 1 May 2009 under the contract which was signed by Mr Mobin on behalf of the vendor and Mr Shaikh on behalf of the purchaser.

[9] Another document signed by them provided that Mr Shaikh was to pay all liabilities pertaining to Clean Deal Ltd up to 2 May 2009 and was to contact the creditors and make arrangements for that to be done. The document, dated 2 May 2009, also contains an express acknowledgement that as part consideration for the purchase price Mr Mobin had transferred to Mr Shaikh stock to a total value of \$114,696. A stock list seven pages long was signed by Mr Mobin and Mr Shaikh. Hand-written next to each signature is the date "2 May 2009." There is a further hand-written stock list with valuations and which also has the same date next to the signatures of Mr Mobin and Mr Shaikh.

[10] Mr Mobin confirmed that he or Clean Deal had employed Mr Sharma from about November 2008 until sale of the business in May 2009 and that Mr Sharma had been paid \$12.50 per hour for about 20 hours work each week. When the business was sold to Monopoliz he said Mr Sharma had transferred his employment to that company which was run by Mr Shaikh.

[11] Mr Shaikh in his evidence said that he had seen Mr Sharma working in the shop before Monopoliz had bought it, during visits made while he was thinking about buying the business. Mr Shaikh agreed that after the sale and purchase was completed at the beginning of May 2009, for several months he had regularly seen Mr Sharma in and about the premises. Mr Shaikh claims that Mr Sharma had been there only to carry out stock taking for Mr Mobin and not as an employee of Monopoliz doing any work for that company.

[12] The documentation clearly shows that stock taking had been completed and signed off by both Mr Mobin and Mr Shaikh on 2 May 2009, the date the business transferred to Monopoliz. There was no reason for Clean Deal to employ Mr Sharma to work in a shop it no longer owned or had any interest in.

[13] After the sale of the business by Clean Deal to Monopoliz a dispute had arisen over a failure of the latter to pay the full purchase price. This dispute was ongoing at the time Mr Sharma claims he was working for Monopoliz, and it had not been resolved by the time he finished at APNA Bazaar. The amount claimed by Clean Deal from Monopoliz was \$20,000. It seems to have been withheld because Monopoliz considered the stock it had acquired was over valued as a result of many food items having passed their use-by dates.

[14] Mr Shaikh denies that Monopoliz signed a written employment agreement with Mr Sharma and denies that Mr Sharma was ever employed by his company Monopoliz to work in the APNA Bazaar, but I accept the evidence of Mr Sharma that after the beginning of May 2009 he ceased employment with Mr Mobin's company and became employed by Monopoliz.

[15] A material witness in this case was Mr Khalil Hanjra. He has had resolved by the Authority his own claim against Monopoliz, which was for unpaid wages of \$17,000 due for the period from 9 May to 8 December 2009. Monopoliz did not take any steps to be heard in that matter and the Authority, after hearing evidence from Mr

Hanjra, found that he had started working in the APNA Bazaar on a part time basis from 9 May 2009. Later he began working full time and continued employment until September 2009. After a period away from New Zealand he returned and commenced work again in November until December.

[16] In a determination dated 22 February 2010 (under AA 81/10) the Authority found that Mr Hanjra had not been paid at \$15 per hour promised to him by Mr Shaikh for all the hours he worked. The Authority found that despite several promises to pay wages owed Mr Shaikh had made only part payments, one in cash of \$200 and four payments by cheque totalling some \$3,000. Mr Shaikh made repeated promises to pay wages due but had not kept his word. I note that in Mr Hanjra's case Monopoliz did provide a statement in reply but subsequently took no part in the investigation meeting. It seems that attempts were made on behalf of Monopoliz to avoid that meeting. Monopoliz made a submission, rejected by the Authority, that it did not have jurisdiction to determine a claim by an employee for arrears of wages.

[17] Mr Hanjra attended the meeting held by the Authority to investigate Mr Sharma's claim. He confirmed that Mr Sharma had been working in the APNA Bazaar while he was employed there throughout the period of claim. Mr Sharma he said had worked on the till as a shop assistant and, as Mr Sharma confirmed, had used his own car to take delivery of supplies needed in the shop. There was no challenge to the Authority's determination awarding Mr Hanjra some \$17,000. It appears that subsequently some agreement was reached between Mr Shaikh and Mr Hanjra to satisfy the requirements of that determination.

[18] Mr Sharma produced to the Authority a recording he had secretly made of a discussion with Mr Shaikh that took place after making his application to the Authority. The discussion, in Hindi, was transcribed in English by Mr Sharma. Mr Shaikh has accepted that the recording is of him speaking to Mr Sharma but does not accept it has been accurately transcribed. A translator was engaged by the Authority to try and do that. To some extent Mr Sharma's transcription has been confirmed, although because of the quality of recording the exercise was not entirely successful.

[19] In Mr Sharma's transcription Mr Shaikh, with reference to the application lodged in the Authority by Mr Sharma, says that he could send "a reply" to it and make things very difficult for Mr Sharma but that it is not in his heart to do so. Mr

Sharma says that he is not asking for anything wrong from Mr Shaikh, who replies “I didn’t say no to u I say u that I ill pay u the money in Instalment of \$500, I never say no.” Mr Sharma replies “I also came for that same thing u promise me”. Mr Shaikh then says, “but I say only the thing that u don’t need to tell the matters related to shop to the outsiders.” Further on according to the transcript Mr Shaikh says “I never say No to Pay u.”

[20] Although the recording and its translation is not determinative of this claim I find it does contain some element of admission by Mr Shaikh that money was owed to Mr Sharma for wages.

[21] I find that Mr Sharma did become employed by Monopoliz in the APNA Bazaar business after its sale at the beginning of May 2009. I find that he worked for some five months while he was a student, as claimed, usually for about 20 – 22 hours a week. I consider it likely that the rate of wages was agreed to be \$12.50 per hour, the same amount paid when the business was owned by Mr Mobin’s company, the original employer of Mr Sharma.

[22] I find that Mr Shaikh paid about \$200 wages for the first week that Mr Sharma worked for Monopoliz and another \$500 later. Mr Shaikh confirmed to the Authority that he had paid money to Mr Sharma, although under \$500, and had given him food to help him out. He viewed the claim as a conspiracy between Mr Sharma and Mr Hanjra, who he said were trying to take advantage of his leniency and humanitarian concern as he put it. I find that Mr Shaikh persuaded Mr Sharma to have the payment of his wages suspended until he was about to depart on a planned future trip back to India for his sisters wedding, when he would be paid the accumulated amount.

[23] I am satisfied that Monopoliz as the employer of Mr Sharma failed to keep a wages and time record in respect of him and that this failure has prejudiced Mr Sharma’s ability to bring an accurate claim for recovery of wages. Monopoliz has not proved the amount claimed is incorrect; it has denied employing Mr Sharma at all. In these circumstances, applying s 132 of the Employment Relations Act 2000, the claims presented by Mr Sharma may be accepted by the Authority.

[24] I therefore accept the schedule of payments due and of payments received presented by Mr Sharma, showing a balance of \$6,913 outstanding including holiday pay.

Determination

[25] Monopoliz Supplies Ltd is ordered to pay to Mr Lalit Sharma \$6,913 as arrears of wages and holiday pay due from employment. Monopoliz is also ordered to pay interest on that sum at the rate of 5% from 3 June 2010, the date the claim was lodged in the Authority.

A Dumbleton
Member of the Employment Relations Authority