

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2018] NZERA Christchurch 81  
3005616

BETWEEN            ARWINDER SINGH  
                                 Applicant

A N D                VR LOFTS MANAGEMENT  
                                 LTD  
                                 Respondent

Member of Authority:     Peter van Keulen

Representatives:         Kenyon Stirling, Counsel for Applicant  
                                 Mark Ryan, Counsel for Respondent

Investigation Meeting:    17 May 2018 at Auckland

Submissions Received:    17 May 2018, from the Applicant  
                                 17 May 2018, from the Respondent

Date of Determination:    31 May 2018

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**DETERMINATION OF THE AUTHORITY**

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- A.     VR Lofts Management Limited must pay Arwinder Singh \$1,081.89 (gross) for wage arrears.**
- B.     Costs are reserved with a timetable set for submissions if required.**

**Employment relationship problem**

[1]     VR Lofts Management Ltd employed Arwinder Singh from 18 July 2015 until 3 September 2015. Mr Singh worked as a Housekeeping Manager at The Lofts, Queenstown.

[2] The terms of Mr Singh's employment included:

- a. Hours of work of 40 hours per week, working six days each week;
- b. Salary of \$35,360.00 per annum, paid fortnightly.

[3] VR Lofts set out Mr Singh's weekly shifts in a roster, which it says was prepared up to two weeks in advance.

[4] Mr Singh says that during his employment, he was required to work more than 40 hours each week, but VR Lofts did not pay him for this additional work. Mr Singh produced his own records of the hours he says he worked, which show that he worked 119 hours, 110 hours and 128 hours in each of the three complete fortnightly periods he worked. And his records show he worked 20 hours for his last three days of work.

[5] VR Lofts produced summaries of the rosters for the period Mr Singh worked which show he was rostered to work only 40 hours per week. It says Mr Singh did not work more than his rostered hours as this was not required and any additional work had to be approved before it was undertaken.

[6] VR Lofts has paid Mr Singh his correct salary for the three fortnightly periods he was employed, based on 40 hours per week.

[7] However, this does not mean that VR Lofts has met its minimum wage obligations to Mr Singh. Mr Singh's claim for wage arrears is essentially that he worked in excess of 40 hours each week and consequently the salary VR Lofts paid him did not cover minimum wage for all of the hours that he worked.

[8] There is no doubt that Minimum Wage Orders made under the Minimum Wage Act 1983 (the MW Act) apply to employees in receipt of a salary.

[9] The process of determining whether an employer has met the requirements of the Minimum Wage Act for an employee who receives a salary is set out in *Law v Board of*

*Trustees of Woodford House*.<sup>1</sup> This process requires an assessment of actual hours worked to ensure that the minimum hourly rate is paid for each hour worked.<sup>2</sup>

[10] So in order to resolve Mr Singh's wage arrears claim, I must determine how many hours he worked during his employment and then calculate if VR Lofts has paid him the applicable minimum wage for those hours.

[11] In order to determine how many hours Mr Singh worked I can consider the wage and time records, Mr Singh's own records and any other evidence of the work undertaken, particularly written and oral evidence given in my investigation.

[12] Employers who pay a salary must ensure that they record the correct number of hours worked by their employees so that an assessment can be made that those hours have been paid at the minimum wage entitlement.<sup>3</sup> VR Lofts has failed to keep adequate wage and time records for Mr Singh. It was only able to produce a copy of the rosters for its employees and it produced pay slips for the four payments it made to Mr Singh.

[13] The rosters are an inadequate record of hours worked:

- a. The rosters are an indication of the shifts Mr Singh was to work. The rosters do not have start and finish times for each shift rather the rosters simply record the number of hours to be worked by each employee on each day of the week.
- b. The rosters do not record the actual hours worked after the work was done. Nothing has been added to the rosters confirming start and finish times and/or number of hours worked.
- c. The rosters are actually wrong, for example, the rosters record Mr Singh working on days he did not work as he swapped his rostered shift with another employee.

[14] In the absence of adequate wage and time records by VR Lofts, I am entitled to rely on the records of Mr Singh<sup>4</sup>. However, in the course of evidence, there were some doubts raised

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<sup>1</sup> [2014] NZEmpC 25

<sup>2</sup> See also *Gunning v Bankrupt Vehicle Sales and Finance Ltd* [2013] NZEmpC 212

<sup>3</sup> *O'Shea (Labour Inspector) v Pekanga O Te Awa Farms Ltd* [2016] NZEmpC 19

<sup>4</sup> Section 132 of the Employment Relations Act 2000

about the accuracy of the records that Mr Singh kept. I am not satisfied that Mr Singh's records are an entirely accurate account of the hours that he worked because:

- a. I do not accept that he recorded them every day, but he collated the hours retrospectively and, it appears some time after he worked, in preparation for this claim.
- b. Mr Singh's records of the hours he worked are not realistic as they do not include unpaid breaks and I am not satisfied on the evidence I heard that he did actually work as long as he says he did on each day.

[15] I do accept however that Mr Singh's records accurately record the days he worked, in contrast to VR Lofts' rosters which were shown to be wrong.

[16] The problem I have is I am satisfied from the evidence I heard that Mr Singh did in fact work more than 40 hours per week. However, I only know the days Mr Singh worked during his employment; I do not know how many hours he worked on each day.

[17] I need to find some way of assessing how many hours Mr Singh worked. In doing this, I must act in equity and good conscience<sup>5</sup>. And I must resolve this employment relationship problem according to the substantial merits of the case rather than technicalities<sup>6</sup>. Applying these principles, it appears to me that I must make some conclusions, based on the evidence, about the nature and amount of work done by Mr Singh and then estimate how many hours he worked on average each day.

[18] Mr Singh's primary role as Housekeeping Manager was to clean the apartments at the Lofts. This was a daily requirement completed between 10:00 am (after guest check out) and 3:00 pm (when laundry was collected). The evidence I heard varied as to whether this aspect of the role took up all five hours between 10:00 am – 3:00 pm. VR Lofts' witnesses said on some days the room cleaning took less than five hours and Mr Singh said that on some days it took more than five hours.

[19] It seems sensible to me to use the five hour time allocated for room cleaning and assume that on each day Mr Singh worked he commenced work at 10:00 am and worked

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<sup>5</sup> Section 157(3) of the Employment Relations Act 2000

<sup>6</sup> Section 157(1) of the Employment Relations Act 2000

cleaning rooms until 3:00 pm. Based on the days Mr Singh has recorded that he worked this means, as a starting point, that Mr Singh worked at least:

- a. 65 hours in the first complete fortnight of his employment (20 July 2015 to 2 August 2015);
- b. 55 hours in the second fortnight of employment (3 August 2015 to 16 August 2015); and
- c. 65 hours in the third fortnight of his employment (17 August 2015 to 30 August 2015).

[20] VR Lofts accepts that Mr Singh did extra work once the room cleaning was completed. It says this extra work only took Mr Singh's total hours of work to 80 hours per fortnight. As I have already indicated, Mr Singh says the extra work he did meant he exceeded 80 hours per fortnight.

[21] The next step then is to estimate how much additional work Mr Singh undertook. The evidence from VR Lofts was that on some days Mr Singh was rostered to work more than five hours. VR Lofts says that for these additional hours Mr Singh cleaned and maintained the communal areas of the Lofts, such as the reception area.

[22] Mr Singh agrees that he did do this additional cleaning and maintenance work but he says he also worked on reception every day until 8:00 pm.

[23] The three witnesses from VR Lofts dispute this. They all said Mr Singh did not work on reception at all. Mangal Behal, the manager at the Lofts, said that in fact Mr Singh refused to work on reception. This evidence conflicts with the rosters that Mr Behal produced – the rosters clearly identify Mr Singh as being responsible for housekeeping and front office (reception) and actually record on certain days that Mr Singh's shift was to cover housekeeping and front office.

[24] On the basis of all of the evidence I heard and the contemporaneous documents produced I believe that Mr Singh worked the following pattern on the days he worked. First, he would work from 10:00 am until 3:00 pm cleaning and preparing the apartments. Next, he would take a lunch break and return to work doing extra cleaning and maintenance in the

communal areas. Then finally his day would be completed by covering reception whilst Mr Behal and Neha Kundra (who were live in managers) took a break – sometimes Mr Singh would join Mr Behal and Ms Kundra during this period, watching television in their apartment, eating dinner with them or just spending time with them.

[25] As this last session of work was rather informal, both parties had different views on whether it was actually work or not.

[26] I cannot say with any certainty if Mr Singh actually stayed until 8:00 pm every day he worked as he claims – I think 8:00 pm represents his best guess of timing based on his memory some time after he left. And, Mr Singh's record of his hours worked does not include unpaid breaks of which he did take at least one unpaid meal break each day.

[27] Weighing up all of the evidence and the findings I have outlined above I conclude that Mr Singh worked, on average, an additional four hours, excluding breaks, from 3:00 pm each day.

[28] This gives an average of nine hours work for every day that Mr Singh worked.

[29] Applying this average to the number of days worked each fortnight I conclude that Mr Singh worked:

- a. 117 hours for the first fortnight of work;
- b. 99 hours for the second fortnight of work; and
- c. 117 hours for the third fortnight of work.

[30] Using the applicable minimum wage of \$14.75 I calculate that VR Lofts should have paid Mr Singh:

- a. \$1,725.75 for the first fortnight of work;
- b. \$1,460.25 for the second fortnight of work; and
- c. \$1,725.75 for the third fortnight of work.

[31] Then deducting from each fortnightly pay the amount Mr Singh was paid I calculate the shortfall to be \$831.75 based on:

- a. \$365.75 for the first fortnight of work;
- b. \$100.25 for the second fortnight of work; and
- c. \$365.75 for the third fortnight of work.

[32] There are two other aspects of Mr Singh's wage arrears claim that I must address. Mr Singh says he worked two days on 18 and 19 July 2015 as part of his training for the role with VR Lofts. And, Mr Singh says he worked 20 hours in his final three days of work but has only been paid for 15.

[33] On the evidence, I heard I accept that Mr Singh did work on 18 and 19 July 2015 and I conclude that VR Lofts should pay him for 10 hours work for these two days. As Mr Singh has not been paid any amount for these days then he should be paid for these hours at the proportionate part of his salary for 10 hours in a fortnight. This is \$170.00.

[34] Applying the assumptions and conclusions I have made on the work Mr Singh undertook for VR Lofts I conclude that in the last three days of his employment he worked 17 hours. Based on what VR Lofts paid Mr Singh for this week of work there is no shortfall against minimum wage and therefore there is no additional payment to be made for Mr Singh's last three days of work.

[35] So, VR Lofts must pay Mr Singh \$1,001.75 in wage arrears (being \$831.75 plus \$170.00) and a further sum of \$80.14 being his additional holiday pay entitlement on the arrears amount calculated at 8%.

### **Determination**

[36] VR Lofts must pay Mr Singh \$1,081.89 (gross) for wage arrears.

### **Costs**

[37] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[38] If they are not able to do so and a determination on costs is needed any party seeking costs may lodge, and serve, a memorandum on costs within 28 days of the date of this determination. The other party will then have 14 days from the date of service of that memorandum to lodge, and serve, any reply memorandum.

Peter van Keulen  
Member of the Employment Relations Authority