

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 156
3006451

BETWEEN AJAY THOMAS JOHN
 KALLUVILLA JOHN THOMAS
 Applicant

A N D AULACK ENTERPRISES
 LIMITED
 Respondent

Member of Authority: Anna Fitzgibbon

Representatives: In person, for Applicant
 No appearance by or for Respondent

Investigation Meeting: 25 May 2017 at Auckland

Date of Determination: 25 May 2017

**ORAL DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

Employment relationship problem

[1] The applicant, Mr Ajay Thomas John Kalluvilla John Thomas, was the Operations Manager for the respondent, Aulack Enterprises Limited (Aulack Enterprises) from on or about 2 May 2016 until on or about 4 December 2016.

[2] Mr Thomas says that during his period of employment, Aulack Enterprises failed to pay him wages to which he was entitled, nor was he paid holiday pay. Mr Thomas seeks payment of arrears of wages pursuant to the Wages Protection Act 1983 and payment of holiday pay due to him pursuant to the Holidays Act 2003.

[3] Mr Thomas says Aulack Enterprises was to provide him with the use of a car to perform his duties but failed to do so. Mr Thomas used his own vehicle and is seeking reimbursement of petrol and maintenance costs.

Non-appearance of the respondent

[4] Aulack Enterprises failed to file a statement in reply to the statement of problem and did not participate in the case management conference convened by the Authority on the 10th of May 2017.

[5] A Notice of Investigation Meeting was issued on the 11th May and sent to both parties setting out details of the investigation meeting on the 25th May 2017. Following receipt of the Notice of Investigation Meeting, the director of Aulack Enterprises, Mr Hardeep Singh made contact with the Authority. Mr Singh informed the Authority Officer, Mrs Samantha Maaroufe, that he had been in hospital and sought an adjournment of the investigation meeting.

[6] Mr Singh was requested to provide the Authority with a medical certificate and documentation that he had been discharged from hospital. Despite reminders, Mr Singh failed to produce the documentation. Aulack Enterprises was informed the Authority's investigation meeting was to proceed on 25 May 2016.

[7] There was no attendance by or on behalf of Aulack Enterprises at the investigation meeting today. I am satisfied that Aulack Enterprises was properly served with the statement of problem and subsequent correspondence from the Employment Relations Authority together with a Notice of the Investigation Meeting.

[8] A check of the Companies Office Register confirms that Aulack Enterprises has not been struck off and appears to be trading and that Mr Hardeep Singh remains its Director.

Investigation meeting

[9] I am satisfied that Aulack Enterprises was properly served with the proceedings and with the Notice of Investigation Meeting. Therefore, I proceeded to investigate the issue as to whether or not Mr Thomas was owed wages, holiday pay and expenses by Aulack Enterprises.

[10] I conducted my investigation in the absence of Mr Hardeep Singh or any other representative from Aulack Enterprises as they failed to appear.

[11] Mr Thomas appeared at the investigation meeting together with his wife Roshni Rajan. Each swore on oath that their evidence was true and correct.

[12] As allowed under s.174E of the Employment Relations Act 2000 (the Act), this determination does not set out all of the evidence. Relevant facts and legal issues are set out along with the Authority's conclusions.

Background

[13] By way of background, Aulack Enterprises is in the business of recruiting labourers to pick kiwifruit on orchards owned by it near Opotoki. Kiwifruit is then delivered by Aulack Enterprises to EastPack Limited for export.

[14] Mr Thomas was employed by Aulack Enterprises as the Operations Manager and began work in the first week of May 2016. Mr Thomas was sent a letter of offer by Mr Hardeep Singh on the 24th March 2016 offering him a position as Operations Manager and enclosing a written employment agreement signed by Mr Singh on the same date.

[15] Mr Thomas considered the agreement and signed it on the 30th March 2016.

[16] Mr Thomas's position was that of Operations Manager and his day to day duties included contacting labourers, giving them times to start work and the orchard they were to work at for the day, organising appropriate equipment for the picking or pruning of kiwifruit, organising completion of timesheets, payroll and similar duties.

Outstanding wages

[17] Under his employment agreement Mr Thomas' hours of work were 40 per week and his hourly rate was \$18 gross. Mr Thomas says he was not paid his full entitlement even though he regularly worked more than 40 hours a week.

[18] Mr Thomas seeks payment of 40 hours a week at \$18 gross an hour for the period of his employment.

[19] Mr Thomas has provided bank statements. The statements show payments of differing amounts on various dates by Aulack Enterprises to Mr Thomas. Total gross payments by Aulack Enterprises to Mr Thomas for the period of his employment amount to \$11,345. Mr Thomas should have been paid the sum of \$21,600 gross for his period of employment. This entitlement is calculated based on 40 hours a week at \$18 gross an hour.

[20] There is a shortfall of wages owing by Aulack Enterprises to Mr Thomas of \$10,255.00 gross.

[21] I order Aulack Enterprises to pay Mr Thomas arrears of wages in the sum of \$10,255.00 gross within 21 days of the date of this determination.

Holiday pay

[22] Mr Thomas was not paid holiday pay during his employment or at its termination. Mr Thomas is owed holiday pay of \$1,728.00 gross under the Holidays Act 2003.

[23] I order Aulack Enterprises to pay Mr Thomas the sum of \$1728.00 gross in holiday pay within 21 days of the date of this determination.

Expenses

[24] Under his employment agreement, Mr Thomas was to be provided the use of a car to perform his duties. Aulack Enterprises failed to provide a car and Mr Thomas agreed to use his. Mr Singh agreed to reimburse Mr Thomas for petrol and maintenance for the use of his own car but has not paid expenses despite requests.

[25] Mr Thomas has calculated expenses for petrol and maintenance for the use of his car for the 7 months of his employment amounts to \$4500 nett. This amount is not disputed as Aulack Enterprises failed to file a statement in reply or attend the Authority's investigation today.

[26] I order Aulack Enterprises to pay Mr Thomas expenses in the sum of \$4500 nett within 21 days of today's date.

Compensation for stress

[27] Understandably, Mr Thomas has suffered stress as a result of his treatment by Aulack Enterprises. However, for compensation to be considered by the Authority a personal grievance claim is required. There is no evidence of such a claim being made and it was not pleaded in the Statement of Problem. This claim is denied.

Costs

[28] Aulack Enterprises is ordered to reimburse Mr Thomas the filing fee of \$71.56.

Certificate of Determination

I direct, pursuant to Regulation 26 of the Employment Relations Authority Regulations 2000, that Mr Thomas be provided with a certificate of determination, sealed with the seal of the Authority recording that, within 21 days of the date of this determination, Aulack Enterprises is to pay Mr Thomas:

- \$11,983.00 gross being arrears of wages and holiday pay owing to him.
- \$4,500 nett being expenses owing, and
- \$71.56 nett in costs.

Anna Fitzgibbon
Member of the Employment Relations Authority