



# New Zealand Employment Relations Authority Decisions

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## Velayudhan v AFS Total Fire Protection Limited (Auckland) [2016] NZERA 572; [2016] NZERA Auckland 384 (22 November 2016)

Last Updated: 2 December 2016

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2016] NZERA Auckland 384  
5631808

BETWEEN SWARAJ VELAYUDHAN Applicant

AND AFS TOTAL FIRE PROTECTION LIMITED Respondent

Member of Authority: Andrew Dallas

Representatives: Applicant in person

No appearance for the Respondent

Investigation Meeting: On the papers

Determination: 22 November 2016

DETERMINATION OF THE AUTHORITY

**A. AFS Total Fire Protection Limited (AFS) must comply with Swaraj Velayudhan's employment agreement by paying him on or before 7 December 2016:**

**(a) \$611.54 gross, as unpaid wages;**

**(b) \$6,775.84 gross, as unpaid holiday pay; and**

**(c) \$360.00 gross, as payment for the preparation of a management report.**

**B. AFS must also pay Mr Velayudhan \$71.56 as reimbursement of the Authority's filing fee on or before 7 December 2016.**

### **Employment relationship problem**

[1] Swaraj Velayudhan was employed by AFS Total Fire Protection Limited

(AFS) as an Assistant Accountant from 28 July 2014 until 1 April 2016.

[2] Mr Velayudhan resigned his employment of his own accord but claimed that AFS failed to pay wages, holiday pay and a contractual payment for the preparation of a management report.

[3] AFS did not lodge a statement in reply but engage more generally in the Authority's processes.

[4] During a case management conference convened with the parties on 29 August

2016, David Gower, director of AFS agreed that Mr Velayudhan was owed the money claimed. Mr Gower said that if Mr Velayudhan provided him with his bank account details and the calculations for the amounts outstanding, he would organise payment of those amounts on or before 2 September 2016.

[5] After a short delay, Mr Velayudhan advised the Authority he had provided Mr Gower with both his bank account details and the calculation of the amounts owing.

[6] The calculated amounts were: \$611.54 gross as unpaid wages; \$6,775.84 gross as unpaid holiday pay; and \$360.00 gross as payment for the preparation of a management report.

[7] After providing the requested details to Mr Gower, Mr Velayudhan's subsequent attempts to contact him proved fruitless. Mr Gower also did not make contact with the Authority, despite being asked to do so on several occasions.

### **Compliance Order**

[8] It is appropriate to make a compliance order in the circumstances of this matter.

[9] AFS must comply with Mr Velayudhan's employment agreement by paying him on or before 7 December 2016:

(i) \$611.54 gross as unpaid wages;

(ii) \$6,775.84 gross as unpaid holiday pay; and

(iii) \$360.00 gross as payment for the preparation of a management report.

[10] Failure by AFS to comply with the compliance order may result in Mr Velayudhan applying to the Employment Court to exercise its powers under s 140(6) of the Act. Remedies can include an order that the person in default be sentenced to imprisonment for a term not exceeding three months and/or a fine not exceeding

\$40,000.

### **Costs**

[11] Mr Velayudhan sought reimbursement of the Authority's filing fee of \$71.56. This is fair and reasonable in all the circumstances. AFS must pay this amount to Mr Velayudhan on or before 7 December 2016.

Andrew Dallas

Member of the Employment Relations Authority