

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKAURAU ROHE**

[2025] NZERA 632  
3342300

BETWEEN VISY BOARD (NZ) LIMITED  
Applicant

AND AMOS LILIA  
Respondent

Member of Authority: Helen van Druten

Representatives: Chris Baldock, counsel for the Applicant  
No appearance for the Respondent

Investigation Meeting: On the papers

Submissions received: Up to 13 August 2025 from Applicant  
No submissions from the Respondent

Determination: 08 October 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Visy Board (NZ) Limited (Visy) claims that it made an overpayment error by continuing to pay a monthly salary to Mr Amos Lilia following termination of his employment on 14 September 2023. This resulted in an overpayment of \$43,448.89 net to Mr Lilia. Visy says that it has taken reasonable steps to recover the overpayments without success and claims that Mr Lilia has been unjustly enriched by the overpayment as the result of a genuine payroll mistake.

[2] Visy seeks an order from the Authority requiring Mr Lilia to repay \$43,448.89 plus interest as repayment of the sum of money received in overpayments.

## **The Authority's investigation**

[3] After initial concerns raised by the Authority regarding service, the Authority confirmed on 6 August 2025 that the statement of problem was served on Mr Lilia as required by the directions issued on 17 March 2025.

[4] On the basis that service was correctly effected, a case management call took place on 6 August 2025. Mr Lilia did not attend and was not represented. Following discussions with Visy, the matter was heard on the papers. A copy of the directions were served on Mr Lilia by email with timetabling of submissions set down between 13 August and 3 September 2025. Visy's submissions and counsel memorandum were also served on Mr Lilia as required by the Authority with evidence of receipt by "Amos" provided by the courier company.

[5] I am satisfied that Mr Lilia was aware of the claim being made and in the absence of any engagement with the Authority, I must conclude that Mr Lilia has elected not to participate in the Authority's investigation of this matter. As provided in clause 12 of Schedule 2 of Employment Relations Act 2000 (the Act), I have proceeded to act fully in the matter as if Mr Lilia had engaged in the process or was represented.

[6] On 13 August 2025, counsel for Visy advised and evidenced that Mr Lilia was employed by Visy Board (NZ) Limited, not Visy Glass Operations (NZ) Limited. It sought that all references to Visy Glass Operations (NZ) Limited be amended to reflect the correct entity. I agree with counsel that while these companies are different legal entities this is a technical change and does not impact the issue before the Authority.

[7] On that basis and as provided by s 221 of the Act, the Authority amends the name of the Applicant party to Visy Board (NZ) Limited.

[8] As permitted by s 174E of the Act, this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

## **Issues**

[9] The issues requiring investigation and determination were:

- (a) Whether Mr Lilia was overpaid \$43,448.89 as a salary overpayment for the period from 15 September 2023 to 30 April 2024. If so, should an order be made requiring Mr Lilia to repay the overpayment amount?
- (b) Should interest be awarded on the overpayment?
- (c) Should Mr Lilia be required to pay costs?

## **Background**

[10] Mr Lilia’s employment ended with Visy on 14 September 2023 and a copy of the letter to Mr Lilia was provided in evidence to the Authority. From that date to 30 April 2024, Mr Lilia continued to receive his usual wages due to an administrative error whereby he was not removed from the payroll system upon termination of his employment.

[11] According to Visy, it realised its error “on or about May 2024” and on 18 September 2024 it attempted to contact Mr Lilia to recover the overpayment.

[12] The Authority understands that to date, Mr Lilia has not engaged with Visy. He has also not engaged with the Authority regarding this matter.

## **Relevant law**

[13] Counsel for Visy refers the Authority to the “any other action” within s 161(1)(r) of the Act to make an order for recovery of mistakenly overpaid monies. This section provides that:

### **161 Jurisdiction**

(1) The Authority has exclusive jurisdiction to make determinations about employment relationship problems generally, including –

...

(r) any other action (being an action that is not directly within the jurisdiction of the court) arising from or related to the employment relationship or related to the interpretation of this Act (other than an action founded on tort...

[14] Counsel also referred the Authority to several similar cases. In *LongChill Limited v Hardaker*, Mr Hardaker was overpaid his wages until LongChill Ltd realised that the paperwork necessary to finalise his employment had not been concluded.<sup>1</sup> That

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<sup>1</sup> *LongChill Limited v Hardaker* [2021] NZERA 409.

case has strong factual similarities with the circumstances leading to Mr Lilia's overpayment. Mr Hardaker was ordered to repay the overpayment.

[15] Employers may pursue recovery of an overpayment of wages under s 6 of the Wages Protections Act 1983 or alternatively where the overpayment does not fall within s 6 of the Act, through the common law claim of restitution for unjust enrichment. It was recently observed in *Pathways Health Limited v Lomas* that the Authority has jurisdiction to consider such claims.<sup>2</sup>

### **Assessment of overpayment**

[16] Payslips for Mr Lilia provided by the Applicant show that he was paid a salary in equal monthly instalments paid electronically into his bank account on 7 September 2023, 5 October 2023, 9 November 2023, 7 December 2023, 4 January 2024, 8 February 2024, 7 March 2024 and 4 April 2024. Considered cumulatively, the overpayment of \$43,448.89 comprises the total of these payslips (with a pro-rated overpayment amount for September 2023 based on the partial month worked) and deducts Mr Lilia's annual leave entitlements upon termination of employment.

### **Unjust enrichment**

[17] Between 14 September 2023 and 30 April 2024, I am satisfied that Visy overpaid Mr Lilia the net sum of \$43,448.89. Evidence of this was provided in the series of payslips under Mr Lilia's name provided by Visy showing that the monthly amount went into the same bank account number. Payments also included relevant public holidays and deductions for KiwiSaver. I also sighted evidence of the total amount with his outstanding leave entitlement amount deducted from the total overpayment amount.

[18] Having reviewed the documentation provided by Visy, I can see no reason why Visy would continue to pay Mr Lilia after his employment ended. There is no provision in the terms and conditions of his employment agreement indicating any entitlement to ongoing payment. I conclude that the overpayments were a consequence of a genuine administrative error. It then follows that:

- (a) Mr Lilia was not entitled to the \$43,448.89 he received and has been unjustly enriched as a result of the error.

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<sup>2</sup> *Pathways Health Limited v Dania Lomas* [2022] NZERA 493 at [7].

- (b) Visy has taken reasonable steps to resolve the matter with Mr Lilia directly, but these have not proved successful.
- (c) To date, Mr Lilia has not repaid any portion of the overpayment or entered into arrangements for repayment.
- (d) Mr Lilia has not provided Visy or the Authority with any reasons why he has not repaid the overpayment or made arrangements to do so.

[19] I did consider whether Visy's failure to act promptly when it discovered the overpayment could have led Mr Lilia to reasonably conclude that the money belonged to him. Visy discovered the overpayment in May 2024, yet it was not until 18 September 2024 that it took action to seek recovery of that overpayment. Visy did not provide any adequate explanation for that delay. Potentially, Mr Lilia may have held onto the money hoping that the error would not be noticed. When the money stopped going into his account and still nobody contacted him, he may have optimistically hoped that was the end of the matter.

[20] However, without Mr Lilia's evidence, there is nothing before me to the effect that it would now be unfair for him to make restitution on account of Visy's delay in seeking recovery and Mr Lilia having altered his circumstances or his position accordingly. The rationale or explanation behind his actions remains unknown.

[21] Given the quantum of the overpayment, I do not accept that Mr Lilia could have reasonably expected that the money was his to keep. I also consider it extremely unlikely that Mr Lilia would not reasonably have noticed that despite his termination of employment, his regular salary amount was still paid into his account on a monthly basis. I was not provided with evidence of any basis for Mr Lilia's inaction or any grounds to conclude that it would be unfair to require him to repay the sum he has mistakenly received.

### **Interest**

[22] The Authority has the power to award interest under clause 11 of Schedule 2 of the Act.

[23] It is appropriate where a person or entity has been deprived of the use of money to make an award for interest. However, I do not accept Visy's claims that it is entitled

to interest on the overpaid sum from October 2023, being the first overpayment, until the date of the Authority's determination.

[24] Based on Visy's lack of action between discovery in April 2024 and action in September 2024, I do not award interest for the full overpayment period, but from 18 September 2024 only (being the date Visy took action to recover the money) until the date of this determination. This interest is payable in accordance with schedule 2 of the Interest on Money Claims Act 2016 and has been calculated using the calculation tool available on the Ministry of Justice website.<sup>3</sup>

### **Costs**

[25] It is a principle set out in *PBO Limited (formerly Rush Security Ltd) v Da Cruz*<sup>4</sup> that costs are modest and that they normally follow the event.

[26] Visy has incurred costs seeking to recover this overpayment. Based on the lack of engagement by Mr Lilia to date and in order to resolve this matter for the parties it is appropriate to determine costs here.

[27] The Authority's discretion to award costs is well established and arises from Section 15 of Schedule 2 of the Act. The discretion to order a party to pay costs to another must be exercised on a principled basis and awards made consistent with the Authority's equity and good conscience jurisdiction. Those principles are well settled and are outlined in the Authority's Practice Note,<sup>5</sup> and Practice Direction,<sup>6</sup> both publicly available online.

[28] The Authority's general approach is to apply a notional daily rate and only adjust that rate if persuaded that circumstances or other factors require an upward or downward adjustment.<sup>7</sup> The current full daily rate is \$4,500 for the first day of an investigation meeting.

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<sup>3</sup> <https://www.justice.govt.nz/fines/civil-debt-interest-calculator/>.

<sup>4</sup> *PBO Limited (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808.

<sup>5</sup> [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-).

<sup>6</sup> <https://www.era.govt.nz/assets/Uploads/practice-direction-of-the-employment-relations-authority.pdf>.

<sup>7</sup> For further information about the factors considered in assessing costs see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)

[29] Visy submits that a full-day tariff should apply due to the need to engage a process server for personal service of documents on Mr Lilia despite determination of the matter on the papers. I disagree with that approach. The matter was heard on the papers and as a result I take a starting point of \$2,250 being a half day of the notional tariff along with the Authority filing fee.

[30] While it is well established that costs are never awarded as a punishment, Visy must take some responsibility for the overpayment error and I consider that the use of a process server is the cost of remedying their own error.

### **Order**

[31] Within 28 days of the date of this determination, Mr Amos Lilia must pay Visy Board (NZ) Limited:

- (a) the sum of \$43,448.89 as repayment of wages received in overpayments and interest on that amount from 18 September 2024;
- (b) \$2,250 as a contribution to costs in recovering this money;
- (c) \$71.55 as the Authority filing fee reimbursement.

Helen van Druten  
Member of the Employment Relations Authority