

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 501
3192159

BETWEEN MANOJ REDDY VULUPALA
Applicant

AND MURALIKRISHNA
BEECHARAJU
First Respondent

SANTOSH REDDY
SONTIREDDY
Second Respondent

Member of Authority: Sarah Blick

Representatives: Vicki Campbell, counsel for the applicant
No appearance for the respondents

Investigation meeting: 21 June 2023 in Auckland

Submissions received: At the investigation meeting from the applicant

Determination: 5 September 2023

DETERMINATION OF THE AUTHORITY

What is the employment relationship problem?

[1] Manoj Reddy Vulupala (known as Mr Reddy) worked for the companies Yakasai Associates Limited (Yakasai) and Floor Mechanics Limited (FM) over consecutive periods between 2017 to 2020. Mr Reddy is an Indian national who held work visas to work as a manager, but he says instead his role involved laying carpet and transporting products for the companies. He claims the companies significantly underpaid him and seeks arrears of wages and holiday pay and interest on amounts owed.¹

¹ Mr Reddy did not bring any actions for penalties in light of statutory timeframes for bringing penalty claims.

[2] In September 2022 Mr Reddy lodged a statement of problem naming the companies as respondents, as well as the respondent directors, Muralikrishna Beecharaju and Santosh Reddy Sontireddy, as persons involved in employment standards breaches. The Official Assignee (OA) was appointed as liquidator of the companies after the Authority application was lodged (with Yakasai being put into liquidation a few days after the investigation meeting). The OA has not agreed for the application to continue against the companies, but the application continues against the current respondents, who have not sought to respond to the application.

What has the Authority's process been?

[3] None of the respondents lodged statements in reply in response to Mr Reddy's application.

[4] The Authority is satisfied the companies, who were named respondents at the time, were served with the statement of problem at their registered offices as shown on the Companies Register.

[5] A copy of the statement of problem was served at Mr Sontireddy's last known address as shown on the Companies Register prior to liquidation, which was Yakasai and FM's registered office address at the time. A copy of the statement of problem was also served at Mr Beecharaju's last known address from the Companies Register, which was FM's registered office address at the time. The Authority has also emailed the respondents over the course of its investigation, with only Mr Beecharaju responding to a couple of emails early on, saying he was no longer a director or shareholder.

[6] Copies of the notice of investigation meeting were also sent to the respondents.

[7] The investigation meeting proceeded in the respondents' absence.² I heard evidence from Mr Reddy (in person) and another former employee of Yakasai, Nagaraju Thanneeru (by audio visual link). Both answered questions under affirmation at the investigation meeting.

² Employment Relations Act 2000, Schedule 2, clause 12.

[8] 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 but all material has been considered.³

What are the issues?

[9] The following are the issues for investigation and determination:

- (a) Have the companies failed to keep wages and time records in accordance with s 130 of the Employment Relations Act 2000 (the Act), and holiday and leave records in accordance with s 81 of the Holidays Act 2003 (HA 2003)?
- (b) Did the companies fail to pay Mr Reddy wages and if so what amount is owing?
- (c) Did the companies fail to pay Mr Reddy holiday pay and if so, what amount is owing?
- (d) Are Mr Beecharaju and Mr Sontireddy persons involved in employment standards breaches and if so, should leave be granted to seek recovery of arrears from them?
- (e) Should interest be awarded on any arrears owing?
- (f) Should either party contribute to the costs of representation of the other party?

What happened?

Employment with Yakasai

[10] Yakasai traded as Hystand Flooring based in Auckland. Mr Reddy says he was employed by Yakasai from 23 October 2017 to April 2019. Mr Reddy has provided a signed letter of offer from Yakasai dated 5 October 2017 which says his hourly pay would be \$18, payable fortnightly.

[11] Mr Reddy has also provided copies of two signed written individual employment agreements with Yakasai, the first of which is dated 5 October 2017 (agreement 1). It says Mr Reddy was employed as Marketing and Operations Manager. Agreement 1 says his work hours were “at least 40 to 45 hours per week” over six days on any day from Monday to Sunday inclusive.

³ Employment Relations Act 2000, section 174E.

[12] Both the letter and agreement 1 name “Murali Krishna” as signing on behalf of Yakasai. Both documents record Mr Reddy would report “to the director”.

[13] In 2018 Mr Reddy’s rate of pay increased to \$21 per hour. There is a second letter of offer and agreement dated 22 February 2018 (agreement 2). The documents otherwise comprise of the same terms and conditions and each name Mr Sontireddy as signing on behalf of Yakasai. They also say Mr Reddy would report “to the director”.

[14] During his employment with Yakasai Mr Reddy says he reported to and took instructions from Mr Beecharaju and Mr Sontireddy. Both men were directors of Yakasai over the course of the employment.

[15] Mr Reddy says did not receive any wage or salary payments in cash and was always paid by direct credit. Mr Reddy has provided the Authority with bank statements which show he was not paid on time fortnightly as agreed - they instead show he was paid very intermittently, with several weeks and sometimes months between payments.

[16] Mr Reddy says the pay he received also did not reflect the number of hours he worked (which was over 60 hours per week on average) and he was not paid sick leave, annual leave or correctly for public holidays.

[17] Mr Reddy’s work visa associated with Yakasai expired in early April 2019. Mr Beecharaju offered him employment with his associated company, FM and Mr Reddy obtained a work visa entitling him to work for FM.

Employment with FM

[18] Mr Reddy says he started working for FM on 5 April 2019. He has provided copies of a letter of offer and employment agreement signed 25 March 2019 (agreement 3). The letter records his position as Marketing Officer with a start dated of 22 April 2019. Agreement 3 says Mr Reddy would be paid \$22 per hour, payable fortnightly, and that he shall work 40 to 45 hours per week. Agreement 3 does not specify the days Mr Reddy would be working. Both documents name Mr Beecharaju signing as director on behalf of FM.

[19] While Mr Reddy was employed as a Marketing Officer, his work again mainly involved the laying of carpet and transporting of goods, now for FM.

[20] Mr Reddy says he received work instructions from Mr Beecharaju and some instructions from Mr Sontireddy while working for FM.

[21] Bank statements also show the payment of wages was intermittent with weeks and sometimes a number of months between payments. Mr Reddy again says he did not receive wage or salary payments in cash and was always paid by direct credit. Payments between March 2019 to August 2019 record “Beecharaju M” in the transaction description.

[22] Mr Reddy again says these payments did not reflect the number of hours worked, as he worked over 60 hours per week. Further, during his employment with FM he was not paid sick leave, annual leave or correctly for public holidays.

[23] Mr Reddy eventually resigned from his employment with FM in August 2020 via email to Mr Beecharaju.

Have the companies failed to keep wages and time records in accordance with s 130 of the Act, and holiday and leave records in accordance with s 81 of the HA 2003?

[24] Mr Reddy awaited the resolution of some High Court proceedings involving the respondents and a third director of Yakasai.⁴ Having ultimately not been paid what he believed he was owed, in early 2022 Mr Reddy made a formal complaint to the Labour Inspectorate. Email correspondence between the Labour Inspectorate and Mr Reddy has been provided to the Authority which confirms the Labour Inspectorate requested wages and time records and holiday and leave records from the companies. Copies of records in the form of handwritten notes from a notepad were provided in April 2022 relating to only FM, with none provided relating to Yakasai. Neither Yakasai nor FM provided any holiday and leave records sufficient to meet the record-keeping requirements of s81 of the HA.

⁴ Mr Reddy’s evidence was the third director was a “sleeping partner” and had no involvement in management or payment of employees.

[25] Shortly after the records were received, the Labour Inspectorate advised Mr Reddy it would not be pursuing any applications on his behalf, and that he may wish to pursue the matter himself.

[26] Mr Reddy has seen the records provided to the Labour Inspectorate and disputes their authenticity, having never sighted the original documents. The records were not completed by Mr Reddy and he says he was never asked to sign them as an accurate record of his hours worked. The Authority has also not seen the original documents. I have strong concerns about the authenticity of the records because of the way they are presented. They also do not meet record-keeping requirements, the payments do not align with amounts reported to Inland Revenue for Mr Reddy's employment, nor do they align with what was deposited into Mr Reddy's bank account in at least some instances.

[27] Having heard from Mr Reddy, I am satisfied on the balance of probabilities that the records provided to the Labour Inspectorate are not an accurate record of the true hours Mr Reddy worked for the companies. Mr Thanneeru also gave supporting evidence regarding the nature of the work and longer hours he and Mr Reddy worked for which they were not paid at relevant times.

[28] The Authority finds the companies failed to keep or produce any (or accurate) wages and time records and holiday and leave records relating to Mr Reddy sufficient to meet record-keeping obligations. This failure has clearly prejudiced Mr Reddy's ability to bring an accurate claim for arrears. Mr Reddy did not receive payslips during his employment with the companies, and I note he has only been able to calculate (with Ms Campbell's able assistance) net figures he believes are owing. On the balance of probabilities, and in the complete absence of any credible evidence Mr Reddy's claims about his hours, days and pay are incorrect, I accept Mr Reddy's arrears of wages and holiday pay claims as proved.⁵

Did the companies fail to pay Mr Vulupala wages and if so what amount is owing?

[29] While Mr Reddy says he worked on average 62 hours each week he has conservatively limited his claim for arrears to the minimum 40 hours per week agreed under his employment agreements.

⁵ Employment Relations Act 2000, section 132 and Holidays Act 2003, section 83.

[30] Based on the hourly rate in the employment agreements and after taking into account the money deposited into Mr Reddy's bank account, I accept Mr Reddy was underpaid a total of:

- (a) \$23,537.32 net by Yakasai; and
- (b) \$17,309.92 net by FM.

[31] Both companies failed to pay the entire amount of wages when they became payable, in breach of s 4 of the Wages Protection Act 1983 (WPA).

Did the companies fail to pay Mr Vulupala holiday pay and if so what amount is owing?

Yakasai annual holiday pay

[32] Mr Reddy took three weeks off from 23 August to 2018 to 11 September 2018 inclusive and he was not paid for this time, including any annual holiday pay in advance of entitlement.

[33] After 12 months employment with Yakasai, on 23 October 2018 Mr Reddy became entitled to four weeks annual holidays on pay. Mr Reddy calculates a total of \$2,553.74 net as owing in relation to that entitlement.

[34] Mr Reddy left his employment with Yakasai in April 2019. Yakasai was required to pay him an amount equivalent to 8 percent of his gross earnings for the period 23 October 2018 and April 2019. This has been calculated by Mr Reddy to a net amount of \$334.80.

[35] I am satisfied Yakasai failed to pay Mr Reddy a total of \$2,898.54 net in outstanding annual holiday pay, in breach of HA 2023 minimum entitlement provisions.

Yakasai public holiday pay

[36] Mr Reddy worked on 12 public holidays between December 2017 and February 2019, totalling 102.5 hours. He was not paid time and a half on those dates, and I accept Yakasai failed to pay him \$767.56 net in relation to the days worked.

[37] In addition, Mr Reddy was entitled to alternative holidays for each of the public holidays worked which he did not take prior to termination. Yakasai failed to pay Mr Reddy a total of \$1,198.14 net as alternative holidays on termination of employment.

[38] Yakasai therefore failed to pay Mr Reddy a total of \$1,965.70 net in relation to public holidays, in breach of HA 2023 minimum entitlement provisions.

FM annual holiday pay

[39] Mr Reddy worked for one year for FM without taking annual holidays. On 5 April 2020 Mr Reddy became entitled to four weeks annual holiday. Mr Reddy calculates at total of \$2,658.72 net as owing in relation to that entitlement.

[40] Mr Reddy left his employment with FM in or about August 2020. FM was required to pay him an amount equivalent to 8 percent of his gross earnings for the period between 5 April and August 2020. This has been calculated to a net amount of \$552.54.

[41] FM therefore failed to pay Mr Reddy a total of \$3,211.26 net in outstanding annual holiday pay due on termination of employment, in breach of HA 2023 minimum entitlement provisions.

FM public holiday pay

[42] Mr Reddy worked on nine public holidays between April 2019 and June 2020, totalling 77.5 hours. He was not paid time and a half on those dates, and I accept FM failed to pay him \$643.91 net in relation to the days worked.

[43] In addition, Mr Reddy was entitled to alternative holidays for of each the public holidays worked which he did not take prior to termination. FM failed to pay Mr Reddy a total of \$1,196.42 net as alternative holidays on termination of employment.

[44] FM therefore failed to Mr Reddy a total of \$1,840.33 net in relation to public holidays, in breach of HA 2023 minimum entitlement provisions.

Are Mr Beecharaju and Mr Sontireddy persons involved in employment standards breaches and if so, should leave be granted to seek recovery of arrears from them?

[45] Mr Thanneeru gave evidence that Yakasai and FM were very closely associated – with employees working across both businesses and sharing marketing. Documents provided to Immigration New Zealand in support of Mr Reddy’s visa application with FM refer to Yakasai and FM as “sister” companies.

[46] Both Mr Beecharaju and Mr Sontireddy were directors and shareholders of the companies during Mr Reddy's employment, being the hands and minds of the two small companies. While Mr Reddy mostly took work instructions from Mr Beecharaju, he also took them from Mr Sontireddy. I am satisfied Mr Beecharaju was responsible for the calculation and payment of wages, including apparently paying Mr Reddy and Mr Thanneeru from his personal bank account following a dispute arising with another director of Yakasai. There were also occasions on which Mr Sontireddy appears to have paid Mr Thanneeru's wages directly from his personal bank account, and of Mr Sontireddy using FM's email address to respond to a query from Mr Thanneeru.

[47] I accept counsel's submission, supported by the evidence, that both Mr Beecharaju and Mr Sontireddy were, at the least, persons knowingly concerned with Yakasai and FM's breaches of several employment standards.

[48] The defaults in payment are due to employment standards breaches of s 4 of the WPA and ss 24, 25 and 27 of the HA 2003. The effect of s 142Y and the finding that the respondents' actions fall within the ambit of s 142W means they can be held jointly and severally liable for Yakasai and FM defaults in payment owing to Mr Reddy.

[49] It is appropriate, given the companies are in liquidation, to make an order that Mr Beecharaju and Mr Sontireddy are jointly and severally liable to pay the arrears and interest on arrears to the extent the companies default in payment on those amounts.

Should interest be awarded on any arrears owing?

[50] Mr Reddy is entitled to an award of interest on the arrears of wages and holiday pay due to him. Interest must be calculated using the civil debt interest calculator.

[51] Interest in relation to the amounts owed by Yakasai should be calculated for the period from 4 April 2019 (being on or about the date the employment with Yakasai ended) until the date of full payment.

[52] Interest in relation to the amounts owed by FM should be calculated for the period from 4 August 2020 (being on or about the date the employment with FM ended) until the date of full payment.

Authority to send a copy determination to Inland Revenue

[53] Counsel for Mr Reddy has pointed out the sums deposited into Mr Reddy's bank account compared to the sums reported to Inland Revenue as having been paid are at odds. It appears the tax deducted from Mr Reddy's wages and remitted to the Inland Revenue on his behalf is under reported. A copy of this determination will be provided to Inland Revenue in the event it determines further action is to be taken.

Outcome

[54] Yakasai Associates Limited failed to pay Manoj Reddy Vulupala the following arrears of wages when they became payable in breach of the WPA and holiday pay in breach of the HA 2003:

- (a) \$23,537.32 net in wages;
- (b) \$2,898.54 net in annual holiday pay;
- (c) \$1,965.70 net in relation to public holiday pay.

[55] Floor Mechanics Limited failed to pay Manoj Reddy Vulupala the following arrears of wages when they became payable in breach of the WPA and holiday pay in breach of the HA 2003:

- (a) \$17,309.92 net in wages;
- (b) \$3,211.26 net in annual holiday pay;
- (c) \$1,840.33 net in relation to public holiday pay.

[56] Interest is to be calculated and is owing on all these amounts in accordance with paragraphs [50]-[52] above.

[57] Mr Beecharaju and Mr Sontireddy are jointly and severally liable as persons involved to pay the arrears, and interest on the arrears, to the extent the companies default in payment on those amounts.

Should either party contribute to the costs of representation of the other party?

[58] Mr Reddy seeks costs. Counsel prepared the application and represented Mr Reddy on a pro bono basis. There is relevant authority in situations such as this that

would enable the Authority to award costs.⁶ I am satisfied an award of costs is appropriate.

[59] The Authority award costs of \$3,000, comprising of the half day tariff (\$4,500) and an uplift in recognition of the significant additional work required to calculate Mr Reddy's claims in the absence of compliant employer records. Mr Beecharaju and Mr Sontireddy are jointly and severally liable to pay these costs.

[60] Costs are awarded on the condition that the costs award is used to pay the fees of Mr Reddy's counsel.

[61] The respondents must also reimburse Mr Reddy the Authority application fee of \$71.55 the was paid upon lodgement of his application.

Sarah Blick
Member of the Employment Relations Authority

⁶ *Innovative Landscapes (2015) Ltd v Popkin* [2020] ERNZ 262, particularly at [21].