IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKAURAU

[2025] NZEmpC 92
EMPC 437/2024

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	HAPPY BELLY PRODUCTION LIMITED Plaintiff
AND	HARRY DAWSON Defendant

Hearing: On the papers

Appearances: M Liu, agent for plaintiff
H Dawson, defendant in person

Judgment: 9 May 2025

JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS

Introduction

[1] Mr Dawson was employed as an acting duty manager in a bar and restaurant owned and operated by the plaintiff company, Happy Belly Production Ltd. The employment agreement between the parties dealt with hours of work. Mr Dawson claimed that he had not been paid in accordance with the terms of the agreement and pursued a grievance in the Employment Relations Authority.

[2] The Authority concluded that Mr Dawson had not been paid in accordance with his contractual entitlements and ordered the company to pay him $1,726.64 by way of

unpaid hours; interest on that amount; and $71.55 by way of reimbursement of the Authority lodgement fee.[1]

[3] The company has pursued a challenge against the Authority's determination. The parties were agreeable to the challenge being determined on the papers.

[4] Resolution of the challenge essentially boils down to the correct interpretation of the employment agreement. While I must reach my own view on the matters before the Court on the company's de novo challenge, it will become apparent that I have reached the same conclusion, for essentially the same reasons, as the Authority.

Legal framework

[5] The principles to apply when interpretating an employment agreement are now well-established, and can be summarised as follows.

[6] The approach is objective. The aim is to ascertain the meaning which the agreement would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the agreement. This objective meaning is taken to be that which the parties intended. While the meaning of a clause in an agreement may appear clear, meaning is informed by context. A provisional conclusion as to meaning is to be cross-checked against the context provided by the agreement as a whole, and any relevant background.

Relevant provisions

[7] All employees are required to have a written employment agreement which must include, amongst other things, any agreed hours of work specified in accordance with s 67C of the Employment Relations Act 2000 or, if no hours of work are agreed, an indication of the arrangements relating to the times the employee is to work.

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1 *Dawson v Happy Belly Production Ltd* [2024] NZERA 635.

[8] Section 67C provides that the hours of work to be specified in an employment agreement includes any or all of the following:

(a) the number of guaranteed hours of work;

(b) the days of the week on which work is to be performed;

(c) the start and finish times of work;

(d) any flexibility in the matters referred to in (b) or (c).

[9] Mr Dawson's employment agreement contained an hours of work clause. It provided that:

> Hours of work – As a full-time employee, you agree to work a minimum of 40 hours per week to discharge your duties. However, due to the nature of our business, your hours of work will be in accordance with our roster schedule which is decided from time to time. This may include working on a Saturday, Sunday or public holiday provided where you work on a public holiday you will be entitled to the benefits set out under clause 7. You must give a minimum 24 hours period for cancellation of a shift.

The parties' respective positions

[10] The company's position is that Mr Dawson was a full-time employee; as a full-time employee he was guaranteed a minimum of 32 hours per week, but he was offered an opportunity to work "up to" 40 hours per week. In this regard the company says that it provided "reasonable" scheduling arrangements, but that an analysis of its scheduling and attendance records reflects that Mr Dawson failed to reach the 40-hour work week in multiple pay periods. This, it says, was primarily due to personal reasons and his refusal to work night shifts.

[11] Mr Dawson's position is that he was entitled to at least 40 hours of work a week and that the company failed to provide it. He takes issue with the accuracy and completeness of the information which the company says emerges from its records as to reduced hours.

Natural and ordinary meaning

[12] The clause expressly refers to Mr Dawson's agreement to work a minimum of 40 hours per week, for hours which were to be selected by the company as set by a roster. The reference to an agreement to work "a minimum" of "40 hours per week" clearly connotes a baseline. Reference to "a minimum" would be redundant if the company could, as it says, set hours of work "up to" 40 but no less than 32. It is highly likely that if that is what the parties objectively intended the clause would not have been drafted in the way it was.

[13] I agree too with a point made by the Authority that the interpretation advanced by the company would be inconsistent with the common law principle that an employer is to pay a worker for their agreed hours of work (provided the worker is ready, willing and able to work those hours).[2]

[14] The natural and ordinary reading of the clause is that Mr Dawson would be rostered on for at least 40 hours per week and would be paid for that time. The natural and ordinary meaning points squarely away from the interpretation advanced by the company.

Cross check against context

[15] As the Authority member pointed out, the clause uses the word "however" after referring to the minimum (40) hours of work and hours of work due to the nature of the business. It is not uncommon for the word "however" to connote a distinction with what has gone before. When read in context, it is evident that is not what the use of the word was designed to achieve in this case. Rather than setting up a contrast, the clause simply goes on to explain how the (minimum of 40) hours of work will be allocated, namely in accordance with a roster according to business need. The clause is not ambiguous in this regard.

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[2] At [20], citing *Gate Gourmet New Zealand Ltd v Sandhu* [2020] NZEmpC 237, [2020] ERNZ 561; and *Mana Coach Services Ltd v New Zealand Tramways and Public Transport Employees Union Inc* [2015] NZEmpC 44, [2015] ERNZ 452.

[16] The company referred to New Zealand employment guidelines that define full-time work as 30 hours or more.[3] In this case, however, Mr Dawson was not merely specified to have "full-time hours", but rather a minimum of 40 hours of work per week.

[17] There is nothing in the rest of the agreement which assists in the interpretation exercise.

[18] Accordingly, there is nothing in the context which changes the natural and ordinary meaning of the hours of work provision.

Was Mr Dawson unpaid for some hours?

[19] The company contended that Mr Dawson did not show up to work on various occasions; Mr Dawson strongly contested this. The Authority found that there was insufficient evidence to establish that Mr Dawson had failed to be ready, willing and able to work the agreed minimum of 40 hours as rostered by the company. Having reviewed the material filed in support of, and in opposition to, the challenge I have reached the same conclusion.

[20] Mr Dawson was unpaid for some of his time with the company. The material on the challenge supports quantification at 64.5 hours. It is appropriate that he be paid arrears of wages and that he be awarded interest on that amount.

Outcome

[21] The company's challenge is dismissed. This judgment stands in the place of the Authority's determination.[4]

[22] Within 10 days of the date of this judgment, the company is ordered to pay to Mr Dawson:

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3 Employment New Zealand "Permanent or fixed term" <employment.govt.nz>.
4 Employment Relations Act 2000, s 183(2).

(a) $1,719.00 (rounded down) for 64.5 hours not paid to him during his employment; and

(b) interest on that amount from 11 September 2023 to the date of payment, with the amount due in interest to be calculated using the Civil Debt Interest Calculator;[5] and

(c) $71.55 in reimbursement of the Authority fee to lodge his application.

[23] Mr Dawson is entitled to costs, which I set at $500. I order that this amount is also to be paid to Mr Dawson within 10 days of the date of this judgment.

Christina Inglis
Chief Judge

Judgment signed at 4.15 pm on 9 May 2025

[5] Ministry of Justice "Civil Debt Interest Calculator" <justice.govt.nz>.