

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 379/10  
5310461

BETWEEN

ASTAFYEV MICHAEL  
ALEXEIVICH  
Applicant

AND

MARK THE CHEF LIMITED  
Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in person  
Mark McLean, for Respondent

Investigation Meeting: 23 August 2010 at Auckland

Determination: 23 August 2010

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Astafyev Michael Alexeivich was employed by Mark the Chef as a Barista – Coffee Assistant pursuant to a written employment agreement which was signed by the respondent on 5 February 2010. His employment ended on 25 April 2010.

[2] Mr Alexeivich claims that the respondent owed him \$5,273.38 in unpaid wages and he sought interest on that amount.

[3] The Statement of Problem attached Mr Alexeivich's employment agreement, correspondence with Mr McLean about his wage arrears, and a schedule of the dates and hours worked, the amount paid, and the amount owing.

[4] The respondent did not file a Statement in Reply, nor did it comply with any of the Directions issued by the Authority.

## **Facts**

[5] Mark McLean is the sole shareholder of Mark the Chef Limited. He was served with the Statement of Problem and he appeared at the investigation meeting this morning. He has not filed any written information on behalf of the respondent.

[6] Mr McLean did not dispute that he owed Mr Alexeivich the wages arrears that had been claimed and said he was prepared to pay it at the rate of \$50 per week. He indicated that if that was not accepted he would put the company into liquidation and Mr Alexeivich would get nothing back.

[7] Mr Mclean also commented that Mr Alexeivich was paid \$15.50 per hour, not \$16.00 as claimed.

[8] Mr Alexeivich produced the original employment agreement which had been signed by both parties. This was reviewed closely by the Authority and both parties. Mr McLean said that the hourly rate of \$16.00 which had been handwritten on the agreement was not his writing, but that he "*was not going to dispute it*".

[9] Mr Alexeivich's evidence was he did not write his hourly rate in to the agreement and that the employment agreement recorded the amount offered by Mr McLean.

[10] I consider it unlikely that Mr McLean would have provided a written employment agreement to a new employee which did not record the rate of pay. The agreement contained other handwritten notations including details recording the position; address of the place of work; and a reference to a meeting 4 weeks after "signing contract". I further note that Mr McLean's evidence was he was not going to dispute the rate.

[11] I therefore conclude, on the balance of probabilities, that the applicable rate of pay was \$16.00 gross per hour and that the schedule of arrears provided by Mr Alexeivich is correct.

[12] I am satisfied that the wage arrears claimed by Mr Alexeivich are indeed owed. Mr McLean accepts that money is owed as well.

### **Determination**

[13] Mark the Chef Limited is ordered to pay Mr Alexeivich \$5,273.38 gross within 14 days of the date of this determination, unless the applicant agrees to some other repayment arrangement.

[14] Mr Alexeivich has been without the use of his full wages as a result of his employer's failure to pay him his full wages, so an award of interest is appropriate.

[15] Pursuant to clause 11 of Schedule 2 of the Employment Relations Act 2000, Mark the Chef Limited is ordered to pay interest of 5% (being the current 90 day bill rate of 3% plus 2% as permitted by clause 11) on \$5,273.38 from 26 April 2010 until Mr Alexeivich has been repaid in full.

[16] Mark the Chef is also ordered to reimburse Mr Alexeivich \$70 for the Statement of Problem filing fee.

### **Costs**

[17] Neither party is legally represented, so no order as to costs has been made.

Rachel Larmer  
Member of the Employment Relations Authority

