

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2019] NZERA 687
3067012

BETWEEN ANDAZ ALI
 Applicant

AND ANGLO TASMAN LIMITED
 Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in person
 Wayne Tollemache, director of Respondent

Investigation Meeting: On the papers

Submissions and Further 9 September 2019 from the Applicant
Information Received: 18 September 2019 from the Respondent
 19 September 2019 from the Applicant
 18 November 2019 from Respondent
 18 November 2019 from Applicant

Date of Determination: 29 November 2019

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Andaz Ali claims that Anglo Tasman Limited (Anglo Tasman) owes him wage arrears consisting of \$2,320.61 in unpaid travel costs and time. Mr Ali also seeks interest on that amount and the costs of this application.

[2] Anglo Tasman says it has already paid Mr Ali everything he is owed, so it disputes that it still owes him wage arrears and/or any travel reimbursements.

Employment agreement

[3] Mr Ali's employment agreement, dated 12 May 2018, in clause 4 of Schedule 1 deals with "*Travel Cost and Time*". It states:

Travel time between your place of residence in the Auckland Region, first hour of travel each way is included, additional hours as approved by Anglo Tasman can be claimed at normal rates.

[4] Clause 3 of Schedule 1 of Mr Ali's employment agreement deals with remuneration. It says Mr Ali will be paid \$50 gross per hour.

Amount claimed

[5] Mr Ali's employment ended on 31 January 2019.

[6] Mr Ali originally claimed \$12,320.61 from Anglo Tasman. It has paid him \$10,000 of that amount.

[7] Mr Ali now seeks \$2,320.61, being the balance of the amount he claims Anglo Tasman still owes him.

What did the parties agree?

[8] Mr Ali says that he was advised by his supervisor, Mr Kenneth Tutt, during a telephone conversation they had on 25 May 2018 to submit his (Mr Ali's) travel cost and time by kilometres travelled further than the distance from his home to the Pacific Steel site, and that "*Mr Thomason would agree on a rate for reimbursement*".

[9] Mr Ali says that he submitted his travel time and cost at the end of every month, as requested, in the form of an activity log. Mr Ali submitted these logs to the Authority as Exhibit D to his affidavit dated 9 September 2019.

[10] However Mr Thomason did not "*agree*" a rate with Mr Ali. Nor did Anglo Tasman raise any issue with Mr Ali about the travel cost and time information he had Mr Ali submitted, as per Mr Tutt's instructions.

[11] Mr Wayne Tollemache, in his affidavit dated 18 September 2019, claims that Mr Tutt did not have the authority to approve or instruct Mr Ali regarding his mileage claims.

[12] The Authority does not accept that.

[13] Mr Tutt held himself out as someone who was authorised by Anglo Tasman to engage with Mr Ali regarding his contractual entitlement to claim travel time. The representations made by Mr Tutt, due to his inherent authority, amounted to “*approval by Anglo Tasman*” in accordance with the requirements of clause 4 of Schedule 1 of Mr Ali’s employment agreement.

[14] If Anglo Tasman had an issue with the arrangements Mr Tutt had communicated, then it should have raised that with Mr Ali at the time.

[15] Mr Thomason never put Mr Ali on notice that the arrangements that had been agreed with Mr Tutt were not authorised, accepted, or agreed to by Anglo Tasman. It is therefore unable to resile from those arrangements at this late stage.

[16] Instead of Mr Thomason agreeing on a rate for reimbursement of Mr Ali’s travel, as he should have, Mr Thomason emailed Mr Ali on 9 July 2018 changing the reimbursement criteria, to require submittal of fuel invoices from that date forward.

[17] Mr Thomason’s email Mr Ali on 9 July stated that for the purposes of his travel cost and time reimbursements:

The Auckland Region spans from Wellsford in the north and Pokeno in the South. Normally a km rate is paid for mileage beyond a 50 km radius of the CBD, I use Sky Tower as a central management point which is approximately 32 km.

I think it is fair and reasonable to assist with your travel costs so I am happy to pay the fuel consumed going forward just include this as a net amount on your weekly invoices. [...].

[18] Mr Ali did not agree to those new (varied) terms.

[19] Anglo Tasman is not permitted to unilaterally vary Mr Ali’s contractual entitlement in that way.

[20] The Authority considers that the new arrangement Mr Thomason put forward is inconsistent with the express term in Mr Ali's employment agreement, that enabled him to claim travel time and cost. It was far less beneficial to Mr Ali because it restricted his reimbursement to only the fuel that he consumed.

[21] Anglo Tasman is unable to rely on its unlawful unilateral variation of an express contractual term in Mr Ali's employment agreement to justify not paying Mr Ali the travel cost and time he was owed, as per the information he submitted while employed.

[22] On 27 September 2018 Anglo Tasman introduced a timesheet system which captured all distances travelled by Mr Ali. This was attached to Mr Ali's affidavit as Exhibit F.

[23] Mr Ali says that he followed this procedure and submitted his distances travelled in the form of time sheets from 1 October 2018 until his employment ended. These were submitted as Exhibit G to his affidavit.

[24] Mr Ali therefore clearly put Anglo Tasman, while he was still employed, on notice of the specific hours that he (Mr Ali) worked each day and of the exact mileage he had travelled on each of his working days.

[25] It is significant that Mr Ali's mileage information was not challenged by Anglo Tasman while he was employed. It only became an issue after Mr Ali sought recovery of travel costs and time in his final pay.

[26] Anglo Tasman is estopped from denying the legitimacy of Mr Ali's mileage claim. Mr Ali relied to his detriment on the information he was given by his employer, while he was employed, regarding the information he was required to submit in order to obtain his travel reimbursement. He had a reasonable expectation his time and cost would be paid as per his contractual entitlement.

[27] Anglo Tasman cannot seek to avoid paying Mr Ali his full contractual entitlements by claiming that, while there were discussions and email communications with him regarding his travel time reimbursement, no actual approval of his travel costs was ever given. Implied

consent was given by Anglo Tasman when it did not challenge the information Mr Ali had given it, in accordance with its instructions.

[28] Anglo Tasman failed to explain to the Authority exactly what expenses had been reimbursed or how it had calculated or quantified the level of reimbursement that had already occurred. Instead its position appears to be that, because it paid most of what Mr Ali claimed, then the remainder of his claim should not be payable.

[29] That is not the correct legal position.

[30] Mr Ali did in fact bring his travel time and cost claims to Anglo Tasman's attention every time he submitted a timesheet. Anglo Tasman cannot reasonably claim it was unaware of its travel costs liability to him.

[31] Any problems Anglo Tasman had with the timesheet information Mr Ali had submitted, while employed, could and should have been raised with him at the time he filed each timesheet. Failure to do so reasonably led Mr Ali to believe that Anglo Tasman had accepted his claims.

Outcome

[32] Mr Ali's arrears claim succeeds.

[33] Anglo Tasman is ordered to pay Mr Ali outstanding contractual expenses totalling \$2,320.61, consisting of his unpaid travel cost and time reimbursements.

Interest

[34] Interest is award to Mr Ali under the interest on Money Claims Act 2016. The amount of interest to be paid is to be calculated using the online "*interest on civil debt calculator*" on the Ministry of Justice website.

[35] Mr Ali is awarded interest on the amount of \$2,392.17, from the date of this determination until that amount has been paid in full by Anglo Tasman.

Costs

[36] Mr Ali is entitled to have his filing fee of \$71.56 reimbursed. As a self-represented applicant there is no issue as to recover of legal costs.

Orders

[37] On or before 24 December 2019, Anglo Tasman is ordered to pay Mr Ali \$2,392.17, consisting of:

- (a) \$2,320.61 reimbursement of unpaid travel cost and time; and
- (b) \$71.56 to reimburse his filing fee.

Rachel Larmer
Member of the Employment Relations Authority