

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 346
5454255

BETWEEN HASRAT ALI
Applicant

A N D JAPAN AUTO GROUP
LIMITED
Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in person
Mohamed Qureshi, Advocate for the Respondent

Investigation Meeting: 05 November 2015 at Auckland

Date of Determination: 06 November 2015

DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY

Employment relationship problem

[1] Mr Hasrat Ali filed a Statement of Problem in the Authority on 01 April 2014 which identified the problem he wanted the Authority to resolve as “*failing to pay the maximum wages as shown in the job contract*”. In the section relating to the facts that have given rise to the problem, Mr Ali wrote:

1. *Unfair treatments in workplace.*
2. *Low wages, no overtime paid, working for seven days.*
3. *Exploitation of labour, unfair dismissal.*

[2] Mr Ali identified that he would like the problem (or matter) resolved in the following way:

1. *Short paid, swearing at the employee.*
2. *Overtime not paid. Assaulted at work.*
3. *Bullying and disrespectful treatment by employer.*
4. *Driving a motor vehicle without a licence. This was force by the employer to do so. The Police was not informed.*
5. *The employer has breached the rules and regulations.*

[3] Subsequent to filing his Statement of Problem Mr Ali raised a number of other concerns with the Authority which I refer to here in order to dispose of all matters currently before the Authority involving these parties. The additional matters include claims that:

- a. Mr Ali was subjected to “*unfair treatment*” as a result of incidents he claims occurred on 24 May, 20 June, 18 August and 05 November 2010;
- b. Mr Ghulam Murtaza Choudhry Meher (Mr Choudhry), who is the sole director and shareholder of GM Car Wholesalers Limited (GMCW), instructed Mr Ali that he had to drive vehicles without a licence or lose his job.
- c. Mr Choudhry unjustifiably dismissed him (Mr Ali) on 05 June 2011.

[4] Mr Ali told the Authority that GM Car Limited (GMC) is a subsidiary of JAG. The Companies Office information on record contradicts that. Mr Mohammed Qureshi who is currently the sole director of JAG but who at the material time was a salesperson employed by JAG says that GMC and/or GMCW have no legal association with JAG.

[5] Mr Qureshi says JAG, GMC and GMC W are all separate legal entities that involve different directors and shareholders and which are run separate to each other as standalone independent businesses. Mr Choudhry advised the Authority that he had no legal involvement with GMC as his involvement was solely with GMCW. The Companies Office records support this evidence and so did Mr Qureshi.

[6] The substance of Mr Ali’s claims appear to have changed a number of times.

[7] Prior to the Authority’s investigation meeting Mr Ali says he was only paid \$50 a week for working seven days a week over the period 01 October 2009 until he was unjustifiably dismissed on 20 March 2014.¹

[8] Mr Ali originally claimed he is owed wage arrears from January 2010 to June of 2011. He says he was not paid any holiday pay, that public holiday entitlements

¹ I recognise this alleged dismissal date conflicts with the date Mr Ali claims Mr Choudhry dismissed him.

were not paid and that he did not receive any overtime. Mr Ali claims \$33,600 wage arrears plus unspecified unpaid overtime.

[9] Mr Ali originally said he worked from 8am – 6pm then he said he worked from 8.30am until 6pm then he said he worked from 9am to 9pm seven days a week. The details provided by Mr Ali regarding his hours of work in support of his claim vary between finish times of 6pm, 7.30pm, 8.30pm, 9pm, 9.05pm, 9.30pm, 9.35pm, 9.50pm, 10pm and 10.50pm. This information contradicts other information Mr Ali has given to the Authority.

[10] Mr Ali acknowledges he did not raise an issue regarding his allegedly wage arrears until many years after his employment had ended. He explained this by saying Mr Choudhry was a powerful man who Mr Ali says he didn't want to upset. Mr Choudhry says that is ridiculous as he never employed Mr Ali and had nothing to do with Mr Ali other than seeing him (Mr Ali) around on premises JAG subleased off GMCW.

[11] Mr Ali originally said he was only ever paid cash. He then subsequently said he received three salary payments directly into his bank account in mid-2010 (17 May 2010, 25 May 2010 and 01 June 2010).

[12] At the Authority's investigation this changed again when Mr Ali said he was paid \$20 cash per week for the first three months he was employed by Japan Auto Group Limited (JAG) then \$50 cash a week. Mr Ali alleges he was paid cash because Mr Choudhry wanted Mr Ali "*off the books.*" Mr Choudhry strongly denies that.

[13] Mr Ali was directed to provide the Authority with a copy of his Inland Revenue Department (IRD) earnings print out. This showed Mr Ali was paid total gross salary by JAG of \$30,766 over the period 01 May 2010 to 31 March 2011. It also shows Mr Ali was paid total gross salary of \$1,846 by JAG over the period 01 April to 31 July 2011.

[14] Mr Ali claims this information is fraudulent. He says JAG advised IRD that it had paid him wages when he did not actually receive those wages. Mr Ali was vague about how much he claims he did in fact receive from JAG. Mr Ali has apparently contacted IRD to conduct an investigation into this alleged fraud.

[15] JAG produced its Employer Monthly Schedule (EMS) documents to the Authority for the material period. These show the amounts Mr Ali was paid. Mr Ali alleged that Mr Choudhry fraudulently created and signed these documents (i.e. they had been made up to cover wrongdoing).

[16] Mr Choudhry refutes that. Mr Choudhry says he had nothing to do with JAG's EMSs. Mr Choudhry provided the Authority with his original driver licence. It was very obvious that the signature on JAG's EMSs was not Mr Choudhry's signature. Even Mr Ali accepted that despite previously insisting that Mr Choudhry had signed JAG's EMSs.

[17] Mr Usman Riaz was the person who processed the pay for JAG. Mr Riaz currently resides in Australia. Mr Riaz is the person named on JAG's EMSs as having certified the information in the EMSs was true and correct. Mr Riaz emailed the Authority to say that Mr Ali had been paid correctly by JAG. Mr Riaz was not available to be questioned by telephone due to prior commitments and timezone issues.

[18] Mr Riaz and JAG produced a letter dated 21 March 2011 to the Authority which Mr Ali signed. This letter says that Mr Ali acknowledged he had been paid weekly on Fridays in cash throughout his employment and that his wages and holiday pay and benefits had all been paid up to that date.

[19] Mr Ali originally told the Authority that this letter was "*forged*". Mr Ali subsequently changed his evidence about this letter. Mr Ali acknowledged under questioning from the Authority that he had in fact signed this letter himself.

[20] Mr Ali originally said he knew the letter was incorrect when he signed it (i.e. that it said he had been paid wages he claims he was never paid) but he signed it because Mr Choudhry threatened him with losing his job if he did not. Mr Ali later changed his evidence to say he signed the letter without reading it.

[21] Mr Riaz says that when an employee's employment ended JAG required its employees to confirm they had received all of their entitlements which is why Mr Ali was given that letter. JAG says it postdates Mr Ali's employment which had ended on 09 March 2011 when his work visa expired.

[22] Mr Choudhry says he had no involvement in the letter as he had nothing to do with JAG's business or employees.

[23] I consider Mr Ali's evidence that he signed the letter acknowledging he had received all of his salary entitlements under threat of losing his job is not credible because on Mr Ali's own evidence his employment with JAG had already ended on 09 March 2011 when his work visa expired.

[24] Mr Riaz's explanation of why the letter was produced and signed appears to have merit as it is consistent with Mr Ali's employment having recently ended.

[25] Mr Ali and JAG signed an individual employment agreement on 05 March 2011. JAG says it sent Mr Ali a written offer of employment dated 26 February 2010 which stated he was employed for 40 hour a week on a salary of \$32,000 per annum. Mr Ali was given two weeks to accept the offer of employment.

[26] Mr Ali initially told the Authority he never received the offer letter but Mr Ali later accepted he could be wrong about that as he would have needed the job offer to support his work visa application.

[27] The Authority called for evidence from Immigration New Zealand (INZ) about Mr Ali's work visa status. INZ produced documents which showed that Mr Ali had a work visa to work as a panel beater and painter for JAG from 15 April 2010 to 09 March 2011.

[28] At the investigation meeting (in light of the INZ work visa information) Mr Ali now says he worked for JAG for the period of his valid work visa only. He denied working for JAG after his valid work visa expired.

[29] Mr Ali originally said he worked for JAG for three weeks only then he worked for GMC. Mr Ali's work permit did not legally permit him to work for GMC.

[30] After questioning Mr Ali about this conflict it appears that he did not change employers because there was no resignation by him from JAG or termination by JAG nor any offer of employment or acceptance from GMC. It is more likely that Mr Ali sometimes did car grooming for JAG at GMC premises. At the material time GMC supplied JAG with cars to sell which is why the cars went between JAG and GMC work sites.

[31] Mr Ali summons Mr Peter Scarlett to the investigation meeting on the basis Mr Scarlett could confirm Mr Ali's days and hours of work. Mr Scarlett was a Finance Officer for GMC (he arranged finance for buyers). Mr Scarlett said he saw Mr Ali around the GMC yard on occasion but because he (Mr Scarlett) worked elsewhere on the premises so had no knowledge of Mr Ali's days or hours of work.

[32] Mr Scarlett says he had nothing to do with JAG which is a separate legal entity from GMC so has no knowledge of who JAG employed or the terms and conditions of employment JAG employees were employed under.

[33] Mr Ali claims that Mr Choudhry employed him and paid him in cash. Mr Choudhry denies that. Mr Choudhry says he had no legal involvement in JAG. Mr Choudhry told the Authority he did not hire or fire JAG's staff and had no information about JAG's employment practices.

[34] Mr Choudhry says he had nothing to do with Mr Ali. Mr Choudhry says that his company GMCW employed seven employees at the material time so he was involved with those employees and not with anyone else who may have been employed elsewhere.

[35] Mr Qureshi has raised concern with the Authority about the conflicting information Mr Ali has provided regarding his dates of employment, hours of work, amounts he was or was not paid, names of his employer, veracity of documentation and the like.

[36] Mr Qureshi also refers to the fact that Mr Ali has made two complaints to the Labour Inspectorate about JAG allegedly exploiting workers but that after making preliminary inquiries the Labour Inspectorate has twice declined to take Mr Ali's allegations against JAG further.

Evidential standard

[37] Mr Ali bears the onus of establishing his claims to the required standard which is the balance of probabilities (i.e. what is more likely than not to have occurred). Mr Ali must also satisfy the Authority that it has jurisdiction to investigate and determine all of the claims and issues he has raised over the course of this matter.

Conflicts in the evidence

[38] This is a case in which almost every matter involves a conflict in the evidence. This conflict is to be resolved by the Authority on the balance of probabilities.

[39] I have preferred JAG's evidence over Mr Ali's evidence. Mr Ali's constant changes to key aspects of his evidence undermined his credibility. Likewise the proving of aspects of Mr Ali's evidence as incorrect (for example, GMC not being subsidiary of JAG, Mr Choudhry not having signed JAG's EMSs, GMC not having employed Mr Ali, Mr Choudhry not being involved with JAG, the letter of 21 March 2011 not being a forgery and the like) also undermined my assessment of Mr Ali's credibility.

[40] I am also concerned about the extent of Mr Ali's claim. It seems highly unusual that an employee would work 7 days a week for \$20 a week (allegedly increasing to \$50 per week after three months) without raising an issue about it.

[41] Mr Ali has made at least two complaints to the Labour Inspectorate, at least one police complaint, he has raised multiple claims with the Authority and a complaint to IRD. Mr Ali has not seemed backward in coming forward to appropriate authorities about his concerns regarding his employment with JAG so his failure to say anything at this time is odd.

[42] Mr Qureshi says if he knew Mr Ali had a problem when they were both employees of JAG then Mr Qureshi (as a fellow employee) would have helped Mr Ali get any issues resolved.

[43] Mr Ali told the Authority he engaged lawyers to assist him with his various visa applications so he clearly had access to legal advice. It is surprising Mr Ali did not take advice regarding his alleged wage arrears at that stage.

[44] The delay also undermines Mr Ali's credibility. These breaches occurred on his evidence in 2010 but he did not file a claim with the Authority until 2014. It is surprising that an employee would wait three years before taking action over wage arrears that are as significant as Mr Ali has claimed. I consider the length of the delay is inexplicable.

Issues

[45] The following issues are to be determined:

- (a) What dates did Japan Auto Group employ Mr Ali?
- (b) Is Mr Ali owed wage arrears by Japan Auto Group?
- (c) Does the Authority have jurisdiction to investigate any of the other matters which Mr Ali has referred to in his communications with the Authority (other than the wage arrears claim)?
- (d) If so, then do any of these additional matters have merit?
- (e) If so, what if any remedies should Mr Ali be awarded?
- (f) What if any costs should be awarded?

What dates did Japan Auto Group employ Mr Ali?

[46] The Authority considers it more likely than not that JAG employed Mr Ali from 15 April 2010 to 09 March 2011. This accords with the work visa and with Mr Ali's evidence that he did not work for JAG either before he got a valid work visa or after his work visa had expired.

[47] It also accords with JAG's EMSs and with the information held by IRD. It also ties in with the letter dated 21 March 2011 which Mr Riaz says was given to all employees to sign after their employment had ended.

Is Mr Ali owed wage arrears?

[48] I did not find Mr Ali's evidence to be credible so am unable to accept his claims as proven to the required standard.

[49] Although under s.132(2) of the Employment Relations Act (the Act) the failure by an employer to keep or produce wage and time records may result in the Authority accepting an employee's evidence regarding the wages they were paid and the hours, days and times they worked, that section does not apply if the defendant proves the employee's claims are incorrect.

[50] I consider this is the case here. JAG has produced sufficient evidence to undermine Mr Ali's evidence about his days and hours of work and what he was actually paid. I therefore find that s.132(2) does not enable the Authority to conclude that Mr Ali has proven his wage arrears claim.

[51] Because I am not satisfied that there is sufficient evidence before the Authority to establish Mr Ali's claims to the required standard his wage arrears claims do not succeed.

Does the Authority have jurisdiction over any of the other matters Mr Ali has raised?

[52] I find that the Authority does not have jurisdiction in respect of the various other matters that Mr Ali has raised. Under s.114(1) of the Act personal grievances must be raised within 90 days of them arising or coming to the employee's attention, whatever is the latter.

[53] That has clearly not occurred in respect of matters that Mr Ali says arose in 2010 or regarding his alleged unjustified dismissal in June 2011 (which I note is months after his work visa with JAG had expired).

[54] Section 114(6) of the Act also requires personal grievance claims to be commenced in the Authority within three years of it being raised. Mr Ali is also clearly outside that time limit.

[55] Mr Ali has apparently raised his allegations that he was required to drive without a licence with the NZ Police who the Authority understands has not pursued his complaint.

[56] As an aside, Mr Choudhry told the Authority that he had no need to tell Mr Ali to drive vehicles, firstly because he did not employ or manage Mr Ali and also because Mr Choudhry's company GMCW employed seven employees who all had their licences. There was no need for Mr Choudhry to require an unlicensed driver to drive GMCW's vehicles and it would be highly undesirable from Mr Choudhry's perspective for that to have occurred.

[57] Mr Ali appears to believe that he has been an "*exploited worker*". However I find that the evidence currently before the Authority did not establish that serious allegation as factually correct.

[58] I further find that the Authority has no inherent jurisdiction to investigate broad allegations of “*worker exploitation*” of the sort Mr Ali wishes to pursue. The Authority’s role is in investigating specific employment related legal claims over which it has express jurisdiction.

[59] The Labour Inspectorate investigates concerns about work exploitation and I note that it has declined to pursue Mr Ali’s complaints about JAG on two occasions already.

[60] I am not satisfied on the balance of probabilities that the Authority has jurisdiction to investigate or determine any of the various additional matters which Mr Ali has raised during the course of his communications with the Authority.

Outcome

[61] Mr Ali’s claims have not succeeded so there is no issue as to remedies.

Costs

[62] Both parties represented themselves so there is no issue as to costs.

Rachel Larmer
Member of the Employment Relations Authority