

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 372

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BETWEEN JANE BELL, RAY GARRETT,
JOHN HARRISON, CHRIS
REDSHAW, BRIAN SHIRLEY
Applicants

AND HYGIENE FOUNDATION
LIMITED
Respondent

Member of Authority: Eleanor Robinson
Representatives: Applicants in Person
No appearance for Respondent
Investigation Meeting: 16 August 2013 at Auckland
Determination: 20 August 2013

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicants, Ms Jane Bell, Mr Ray Garrett, Mr John Harrison, Mr Chris Redshaw, and Mr Brian Shirley, (the Applicants) each claim that they are owed unpaid wages and other monies by the Respondent, Hygiene Foundation Limited (HFL).

Ms Bell

[2] Ms Bell was employed by HFL as a Trainer/Regional Manager from 13 May until 2 August 2013 in accordance with an individual employment agreement which on an attached Schedule itemised her salary as \$100,000.00 gross per annum.

[3] Ms Bell said she had not received any payments by way of remuneration since she commenced employment with HFL, and consequently she had resigned her employment with HFL with immediate effect on 2 August 2013.

[4] Ms Bell claims that she is owed:

- Unpaid wages for the period 13 May 2013 to 2 August 2013.
- Unpaid statutory holiday pay for the period 13 May 2013 to 2 August 2013.
- Unpaid business expenses in accordance with clause 6.3 of her employment agreement in the sum of \$117.00 gross

Mr Garrett

[5] Mr Garrett was employed by HFL as a Trainer/Regional Manager from 22 April 2013 until 6 August 2013 in accordance with an individual employment agreement which on an attached Schedule itemised his salary as \$100,000.00 gross per annum.

[6] Mr Garrett said he had not received any payments by way of remuneration since he commenced employment with HFL, and consequently he had resigned his employment with HFL with immediate effect on 6 August 2013

[7] Mr Garrett claims that he is owed:

- Unpaid wages for the period 22 April 2013 to 6 August 2013
- Unpaid statutory holiday pay for the period 22 April 2013 to 6 August 2013
- Unpaid business expenses in accordance with clause 6.3 of his employment agreement in the sum of \$100.00 gross

Mr Harrison

[8] Mr Harrison was employed by HFL as a Trainer/Regional Manager (Bay of Plenty) from 13 May 2013 until 6 August 2013 in accordance with an individual employment agreement which on an attached Schedule itemised his salary as \$100,000.00 gross per annum.

[9] Mr Harrison said he had not received any payments by way of remuneration since he commenced employment with HFL, and consequently he had resigned his employment with immediate effect on 6 August 2013.

[10] Mr Harrison claims that he is owed:

- Unpaid wages for the period 13 May 2013 to 6 August 2013.
- Unpaid statutory holiday pay for the period 13 May 2013 to 6 August 2013.
- Unpaid business expenses in accordance with clause 6.3 of his employment agreement in the sum of \$591.21 gross.

Mr Redshaw

[11] Mr Redshaw was employed by HFL as a Regional Manager from 26 November 2012 to 13 May 2013 in accordance with an individual employment agreement which on an attached Schedule One itemised his salary as \$78,000.00 gross per annum.

[12] Mr Redshaw resigned from his employment with HFL on 13 May 2013 and his last day of working for HFL was 20 June 2013. During the period of his employment with HFL Mr Redshaw stated he had received only the sum of \$24,074.00 by way of remuneration, rather than the full monies to which he was entitled in accordance with his employment agreement.

[13] Mr Redshaw claims he is owed:

- Unpaid wages for the period 26 November 2012 to 20 June 2013.
- \$5,000.00 in respect of a bonus payments
- Unpaid statutory holiday pay for the period 26 November 2012 to 20 June 2013

Mr Shirley

[14] Mr Shirley was employed by HFL as a Corporate Sales Manager from 15 April 2013 until 31 July 2013 in accordance with an individual employment agreement which itemised his salary as \$45,000.00 gross per annum. In addition Mr Shirley was entitled to a commission payment of 5% of the amount paid by any client secured by HFL

[15] Mr Shirley said he had not received any payments by way of remuneration since he commenced employment with HFL, and consequently he had resigned his employment with HFL with immediate effect on 31 July 2013.

[16] Mr Shirley claims that he is owed:

- Unpaid wages for the period 15 April to 31 July 2013.
- \$1,080.00 gross in respect of commission payments for the period 15 April to 31 July 2013.
- Unpaid statutory holiday pay for the period 15 April to 31 July 2013.
- Unpaid business expenses in accordance with clause 6.3 of his employment agreement in the sum of \$380.00 gross.

Issues

[17] The issues for determination are whether the Applicants are owed unpaid wages and other monies by HFL.

Failure of Respondent to attend or be represented

[18] HFL did not attend, and was not represented, at the Investigation Meeting despite having been served with the Notice of Investigation. The Authority received an email from Mr Lance Ryan, Partner of HFL on 16 August 2013 in which Mr Ryan acknowledged that the Applicants were owed wages by HFL.

[19] An Authority Support Officer attempted to contact Mr Ryan following receipt of the email to ascertain if Mr Ryan intended to attend the Investigation Meeting, but was unable to do so. I delayed the commencement of the meeting for some 10 minutes; however Mr Ryan did not arrive.

[20] For the reasons set out above I am satisfied that HFL had notice of the application and the date of the Investigation Meeting and that it chose not to attend or to be represented.

[21] I have therefore proceeded pursuant to clause 12 Schedule 2 of the Employment Relations Act 2000 to act as fully as if HFL had attended or been represented.

Determination

Statutory entitlement to wages

[22] The Wages Protection Act 1983 governs the payment of wages between an employer and an employee. In accordance with s 4: *an employer shall, when any wages become payable to a worker, pay the entire amount of those wages to that worker without deduction.*

[23] The Applicants' claims were supported by documentation substantiating the dates for which they were claiming non-payment and each of the Applicants gave evidence on oath which supported the documentary material filed with the Authority.

[24] I find that the Applicants are entitled to payment of wages for the hours which they have worked, in addition to unpaid statutory holiday entitlement, unpaid business expenses and an unpaid bonus payment as claimed and as set out individually below.

Remedies

Wage claims

[25] HFL is ordered to pay **Ms Bell** the sum of **\$23,076.92 gross** in respect of unpaid wages for the period 13 May 2013 to 2 August 2013.

[26] HFL is ordered to pay **Mr Garrett** the sum of **\$29,615.38 gross** in respect of unpaid wages for the period 22 April 2013 to 6 August 2013

[27] HFL is ordered to pay **Mr Harrison** the sum of **\$23,846.15 gross** in respect of unpaid wages for the period 13 May 2013 to 6 August 2013

[28] HFL is ordered to pay **Mr Redshaw** the sum of **\$10,270.00 net** in respect of unpaid wages for the period 26 November 2012 to 20 June 2013 calculated as total wages due for the period minus \$24,074.00 net paid by HFL

[29] HFL is ordered to pay **Mr Shirley** the sum of **\$13,500.00 gross** in respect of unpaid wages for the period 15 April 2013 to 31 July 2013.

Holiday pay and other monies owing:

Ms Bell

[30] HFL is to ordered to pay Ms Bell the sum of:

- \$1,846.15 gross in respect of unpaid statutory holiday pay for the period 13 May 2013 to 2 August 2013

- \$117.00 gross in respect of unpaid business expenses incurred during the period 13 May 2013 to 2 August 2013.

Mr Garrett

[31] HFL is ordered to pay Mr Garrett the sum of:

- \$2,369.23 gross in respect of unpaid statutory holiday pay for the period 22 April 2013 to 6 August 2013
- \$100.00 in respect of unpaid business expenses incurred during the period 22 April to 6 August 2013

Mr Harrison

[32] HFL is ordered to pay Mr Harrison the sum of:

- \$1,907.69 gross in respect of unpaid statutory holiday pay for the period 13 May to 6 August 2013
- \$591.21 in respect of unpaid business expenses incurred during the period 13 May 2013 to 6 August 2013

Mr Redshaw

[33] HFL is ordered to pay Mr Redshaw the sum of:

- \$3,696.00 gross in respect of unpaid statutory holiday pay for the period 26 November 2012 to 20 June 2013
- \$5,000.00 gross in respect of an unpaid bonus payment in accordance with an agreement with HFL

Mr Shirley

[34] HFL is ordered to pay Mr Shirley the sum of:

- \$1,080.00 gross in respect of unpaid commission for the period 15 April 2013 to 31 July 2013.
- \$1,080.00 gross in respect of unpaid statutory holiday pay for the period 15 April 2013 to 31 July 2013.

- \$380.00 in respect of unpaid business expenses incurred during the period 15 April 2013 to 31 July 2013.

Interest

[35] The Applicants have applied for interest on the outstanding sums owed to them.

[36] The Authority has the power to award interest pursuant to clause 11 of the Second Schedule of the Act at the rate prescribed by the Judicature Act 1908, which is currently 5% per annum¹.

[37] I consider that it is appropriate that HFL is ordered to pay interest on the outstanding sums owed to the Applicants.

[38] HFL is to pay interest of 5% on the outstanding sums due to Ms Bell, Mr Garrett, Mr Harrison, Mr Redshaw and Mr Shirley from the date of determination until the amounts owed are paid in full.

[39] The Applicants are each to be reimbursed the filing fee of \$71.56 by HFL.

Costs

[40] While costs are reserved, I note here that, subject to their submissions, the Applicants were not legally represented and, unless they incurred legal costs, it is therefore unlikely they have grounds to claim a contribution to any fair and reasonable costs.

Eleanor Robinson
Member of the Employment Relations Authority

¹ Judicature (Prescribed Rate of Interest) Order 2011 (SR2011/177)