

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2020] NZERA 7  
3082092

BETWEEN                      CARL BLOOMFIELD  
   Applicant  
  
AND                                TEN GROUP LIMITED  
   Respondent

Member of Authority:        Rachel Larmer  
  
Representatives:                Applicant in person  
   No appearance for the Respondent  
  
Investigation Meeting:        8 January 2020 in Auckland  
  
Date of Written Record of    9 January 2020  
Oral Determination:

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**ORAL DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     Mr Bloomfield worked for Ten Group Limited (Ten Group) from 29 May 2017 until 31 October 2019. He left that job after working excessively long hours but not being paid any salary for the three weeks before he resigned. Ten Group also failed to pay him any holiday pay after his employment had ended.

[2]     Mr Bloomfield seeks:

- (a)     Payment of all outstanding wage arrears;
- (b)     Reimbursement of business expenses he personally incurred on behalf of the company when Ten Group was unable to pay them;

- (c) That penalties be imposed on Ten Group Limited (Ten Group) for its breaches of his employment agreement, arising from its failure to pay him his salary and holiday pay;
- (d) Interest on his wage arrears; and
- (e) Reimbursement of his costs.

### **No appearance by Ten Group**

[3] Mr Bloomfield's Statement of Problem was served on Ten Group at its registered address for service by track and trace courier on 27 November 2019. It was signed for by Linda Evans.

[4] Ten Group did not file a statement in reply within 14 days of the Statement of Problem being served on it, nor did it seek leave to file a Statement in Reply out of time.

[5] On the morning of the investigation meeting, Ten Group's sole director and 50 per cent shareholder – Ms Tanya Hayden, emailed the Authority to say that she would not be attending.

[6] Ms Hayden's email to the Authority also attached a list of Ten Group's current payables. She also said that Ten Group had no assets and that she had applied to the Court to appoint Mr Grant Reynolds as a liquidator.

[7] As at today's date, Ten Group is not in liquidation.

### **Ten Group's records**

[8] Ms Hayden provided a certificate of earnings for Mr Bloomfield for the 2018 and 2018 calendar years.

[9] The records Ms Hayden provided record that Mr Bloomfield was owed \$14,157.20 in unpaid annual leave entitlements as at 10 October 2019.

### **Issues to be determined**

[10] The following issues are to be determined:

- (a) Is Mr Bloomfield owed wage arrears?
- (b) If so, should he be awarded interest on any wage arrears he is owed?

- (c) Does this matter involve a breach of employment standards?
- (d) Should Mr Bloomfield be granted leave to pursue Ms Hayden personally, as a person involved in breaches of employment standards?
- (e) Has Ten Group breached Mr Bloomfield's employment agreement?
- (f) If so, should a penalty be imposed on Ten Group for any breaches that have occurred?
- (g) If so, should some or all of it be paid to Mr Bloomfield personally?
- (h) What if any costs should be awarded?

**Is Mr Bloomfield owed wage arrears?**

[11] Mr Bloomfield gave evidence on oath to the Authority to prove the wage arrears and penalty claims he had made.

[12] The pay record Ms Hayden provided only calculated Mr Bloomfield's annual holiday up to 10 October 2019. An additional calculation therefore has to be done for the period 11 – 31 October 2019. This is calculated at the rate of 8% of his total gross earnings over that period.

[13] Ten Group therefore owes Mr Bloomfield \$14,157.20 holiday pay plus another \$415.38 annual holiday pay for the period 11-31 October 2019 (\$1,730.77 per week x 3 weeks = \$5,192.31 gross x 8% holiday pay).

[14] Ten Group therefore owes Mr Bloomfield total annual holiday pay arrears of \$14,572.58.

[15] The Authority accepted his uncontested evidence that Ten Group owes Mr Bloomfield:

- (a) \$5,192.30 gross, being three weeks' unpaid wages for the period 11- 31 October 2019;
- (b) \$14,572.58 gross unpaid annual holiday pay, in accordance with the record provided by Ms Hayden; and
- (c) \$675.92 for outstanding company expenses he had personally incurred for fuel and vehicle costs when Ten Group was unable to pay these itself. Ms Hayden told him to pay these expenses out of his own pocket and that he would be

reimbursed later. The amounts incurred were recorded in a spreadsheet identifying each company expense he had paid and the date and amount.

**Should interest be awarded on these wage arrears?**

[16] Ten Group, and Ms Hayden in her role as its director, have deprived Mr Bloomfield of the use of his own money. These actions left him and his family without an income over the Christmas and New Year period. He has still not been paid what he is owed.

[17] Ten Group is ordered to pay Mr Bloomfield interest on his wage arrears from 31 October 2019 until his wages arrears have been paid to him in full. This award of interest is made under the Interest on Money Claims Act 2016.

[18] The actual amount of interest Ten Group must pay Mr Bloomfield is to be calculated using the Civil Debt Interest Calculator that can be found on the New Zealand Ministry of Justice website (see [www.justice.govt.nz](http://www.justice.govt.nz)).

**Does this matter involve a breach of employment standards?**

[19] Section 5 of the Employment Relations Act 2000 (the Act) defines the term “*employment standards*”. It includes, among other things, breaches of provisions of the Wages Protection Act 1983 (the WPA).

[20] The WPA requires employers to pay employees their wages/salary in full (without deduction) and on time.

[21] Ten Group’s failure to pay Mr Bloomfield his salary, both while employed and upon termination of his employment, clearly breached the WPA. Ten Group has therefore engaged in breaches of employment standards, as defined in s 5 of the Act.

**Should Mr Bloomfield be granted leave to pursue Ms Hayden personally, as a person involved in breaches of employment standards?**

[22] Mr Bloomfield told the Authority that he and other employees had worked excessive hours to try and help get Ten Group out of debt. However Mr Bloomfield says that did not resolve Ten Group’s problems because the company was being mismanaged by its sole director, Ms Hayden.

[23] Ms Hayden was the person who was responsible for running Ten Group, so she was effectively ‘the mind’ of the company. She made all of the financial decisions, including the decisions not to pay employees their wages/salary, while still requiring them to continue working (without pay) for Ten Group’s benefit.

[24] Mr Bloomfield said he has made numerous attempts to obtain payment of his wage arrears but that his requests have been ignored by Ms Hayden, who was the person responsible for paying Ten Group’s employees.

[25] Although Ms Hayden’s assurances to Mr Bloomfield that he would be paid, meant that he continued to work for three weeks without being paid, he left work after losing confidence in her assurances about that.

[26] Mr Bloomfield became concerned that he would not be paid at all when he saw that Ms Hayden was selling Ten Group’s assets (such as tools and possibly even work vehicles) for cash and keeping the cash payments ‘off the books’, - even potentially retaining them for herself and/or her husband’s benefit.

[27] Mr Bloomfield also noticed that Ms Hayden was not taking steps to recover the substantial debts that others owed to Ten Group that, if recovered, could have been used to pay employees the wage arrears they were owed.

[28] Ms Hayden did not appear at the Authority’s investigation meeting, so her response to Mr Bloomfield’s allegations about the way in which she was running Ten Group and in particular its bank accounts and finances is as yet unknown.

[29] These sort of financial concerns are issues that a liquidator (if one is appointed) would need to investigate, to ascertain whether or not Ms Hayden has been complying with her legal obligations as a director of Ten Group and/or whether she has improperly diverted funds from Ten Group to herself and/or family.

[30] Ten Group’s failure to pay Mr Bloomfield three weeks’ salary while he was employed or to pay him his holiday pay when his employment ended, are breaches of employment standards, because they were contrary to the Wages Protection Act 1983 (WPA).

[31] It is therefore appropriate to grant Mr Bloomfield leave under s 142Y(2)(a) of the Act to be able to pursue Ms Hayden personally for liability for Ten Group's failure to pay his salary and holiday pay if it turns out that Ten Group is unable to pay the money it owes him.

[32] That would however require Mr Bloomfield to file a new Statement of Problem that personally named Ms Hayden as a respondent and to prove in accordance of s 142Y(2)(b) of the Act that Ten Group is unable to pay the wage arrears he was awarded. This matter is not yet at that stage, as Ten Group has to first be given an opportunity to pay Mr Bloomfield his wage arrears.

### **Did Ten Group breach Mr Bloomfield's employment agreement?**

[33] Clause 8 of Mr Bloomfield's employment agreement deals with remuneration.

[34] Clause 8.1 states that his salary would be paid by direct credit into his bank account in accordance with the Schedule 1 payment schedule.

[35] Schedule 1 of the employment agreement states that his payment cycle is fortnightly, in arrears, on a Tuesday.

[36] Clause 8.3 states that Mr Bloomfield will be paid his final pay on the first pay day after his employment ends.

[37] Ten Group's failure to pay Mr Bloomfield his salary while employed and his holiday pay in the first pay cycle after his employment ended breached clauses 8.1 and 8.3 of his employment agreement.

### **Should a penalty be imposed on Ten Group for its breaches of the employment agreement?**

[38] The failure to pay an employee money they have worked hard to earn is a very serious matter.

[39] Penalties are necessary to punish Ten Group for its breaches of Mr Bloomfield's employment agreement and to deter it, and other employers, from engaging in such breaches.

[40] The imposition of penalties is also consistent with the s 3 objects of the Act. These include the object of acknowledging and addressing inherent inequality of power in employment relationships and promoting the effective enforcement of employment standards.

[41] It is therefore appropriate that penalties be imposed on Ten Group for failure to pay Mr Bloomfield in accordance with the terms of his employment agreement.

[42] After considering all of the mandatory penalty assessment factors set out in s 133A of the Act, the Authority orders Ten Group to pay a penalty of \$6,000 for its breaches of Mr Bloomfield's employment agreement.

[43] These were intentional breaches which resulted in severe loss and stress being suffered by Mr Bloomfield and his family because he was its sole breadwinner. He was deliberately misled by Ms Hayden to continue working for Ten Group, without pay, in the belief that his wages were about to be paid to him. That deprived him of the opportunity to obtain a new job at an earlier time.

[44] When funds from sales of Ten Group's assets were received, instead of paying Mr Bloomfield what he was owed, Ms Hayden unilaterally decided to use these funds for other, possibly self-interested reasons - such as benefiting her and/or her husband personally.

[45] Ten Group has not had penalties imposed on it previously. It has also not remedied these breaches because Mr Bloomfield has still not been paid.

**Should some or all of the penalty be paid to Mr Bloomfield personally?**

[46] Ten Group's breaches of Mr Bloomfield's employment agreement had a highly detrimental effect on him. Those adverse effects are still continuing. He gave evidence to the Authority of his suffering and stress.

[47] Mr Bloomfield and his family had to face the Christmas holiday period without any income. Mr Bloomfield and his family have suffered significant financial hardship and he is still out of work as at the date of the Authority's investigation meeting, through no fault of his own.

[48] Ten Group is ordered to pay \$4,000 of the total penalty imposed on it to Mr Bloomfield personally. The remaining \$2,000 of the total \$6,000 penalty imposed on Ten Group is to be paid by it to the Crown Bank Account.

### **What if any costs should be awarded?**

[49] Mr Bloomfield was self-represented so he cannot be awarded costs. Ten Group is however ordered to reimburse Mr Bloomfield \$71.56 for his filing fee.

### **Authority's orders**

[50] According to Ms Hayden's email on 8 January 2020, liquidation is imminent. It is therefore appropriate to impose a 14 day deadline for Ten Group to pay Mr Bloomfield the amounts he has been awarded in this determination.

[51] If Ten Group is unable to pay Mr Bloomfield what he is owed, then he may apply for a compliance order and/or pursue Ms Hayden personally for the wage arrears component of what he has been awarded.

[52] Within 14 days of the date of this determination, Ten Group is ordered to pay Mr Bloomfield \$24,512.07 plus interest on that amount, with the amount of interest being calculated using the Civil Debt Interest Calculator on the Ministry of Justice website.

[53] The amount of \$24,512.36 Ten Group is to pay Mr Bloomfield is made up as follows:

- (a) \$5,192.30 salary arrears;
- (b) \$14, 572.58 holiday pay arrears;
- (c) \$675.92 company expenses he has incurred;
- (d) \$4,000 of the total penalty imposed for breaches of his employment agreement;
- (e) \$71.56 to reimburse his filing fee.

**Rachel Larmer**  
**Member of the Employment Relations Authority**