

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2018] NZERA Christchurch 122  
3031300

BETWEEN            BRADLEY BROWN  
                                 Applicant  
  
AND                    BIGGS CONTRACTING  
                                 LIMITED  
                                 Respondent

Member of Authority:     Peter van Keulen  
  
Representatives:           Applicant in person  
                                 Gerald Biggs for Respondent  
  
Investigation Meeting:     24 August 2018  
  
Determination:             27 August 2018

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**DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY**

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**Wage arrears claim**

[1]     Biggs Contracting Limited employed Bradley Brown for a short period of time in February and March 2018. During the course of this employment, Biggs Contracting did not pay Mr Brown his wages and holiday pay. Mr Brown has made an application for payment of arrears of wages and holiday pay. I will consider this application pursuant to s131 of the Employment Relations Act 2000.

**Events giving rise to the wage arrears claim**

[2]     Biggs Contracting employed Mr Brown as a labourer. Mr Brown was to be paid \$20.00 per hour. In total, Mr Brown says he worked 104.5 hours for Biggs Contracting but he was not paid any wages, except for \$100.00 paid to him some time after his employment was terminated.

## Discussion

[3] In the investigation meeting, Biggs Contracting accepted that Mr Brown had not been paid wages for the work he completed. But Gerald Biggs, the shareholder and director of Biggs Contracting, advanced two responses to the wage arrears claim<sup>1</sup>:

- a. Mr Brown had not provided any records of the hours worked so Biggs Contracting could not be sure of how much he was owed, and Biggs Contracting had told its employees if they do not keep records of their hours and provide them to the company then they would not get paid.
- b. Mr Brown owed Biggs Contracting money for a hard hat and a chainsaw that he damaged whilst working.

[4] Biggs Contracting was not able to verify the claims of damage to its property with any clear information on what occurred and the costs involved.

[5] Mr Brown denied responsibility for the damage to the chainsaw but accepted that he should pay for the hard hat.

[6] I am not satisfied that there is a valid claim by Biggs Contracting against Mr Brown for damage to its property. First, there is no evidence of the damage caused and the loss and second, there is no evidence to support any liability for the damage, in law. However, as Mr Brown conceded he is prepared to pay for the cost of replacing the hard hat I will take this into account. I will not make a determination on the possible claim for damage to the chainsaw as no formal claim has been lodged and no evidence led. If Biggs Contracting wishes to pursue this matter it can take the appropriate steps to initiate a claim.

[7] In terms of the hours worked, I explained to Mr Biggs that Biggs Contracting has an obligation to keep wage and time records and its failure to do so and therefore its failure to produce any records of the hours worked means I can rely on an employee's calculations in establishing the hours worked and the wages owed.

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<sup>1</sup> This was the first time these matters have been raised in conjunction with this matter as Biggs Contracting has not lodged a statement in reply and it did not participate in the case management telephone conference.

[8] I am satisfied that Mr Brown's account of what Biggs Contracting owes him is correct, including his evidence as to the payment he had received.

[9] As a result, I conclude that Biggs Contracting owes Mr Brown the following amounts:

- a. Unpaid wages for 104.5 hours of work being \$2,090.00 gross;
- b. Holiday pay calculated at 8% of total earnings being \$167.20 gross<sup>2</sup>;

[10] On this basis, Mr Brown is owed total wage arrears of holiday pay and wages of \$2,257.20 gross.

[11] Mr Brown says he has received one payment of \$100.00. So the net amount of the wage arrears payable by Biggs Contracting should be reduced by \$100.00. It can also be reduced by the replacement cost of the hard hat Mr Brown has agreed to pay for, being \$170.00

[12] Mr Brown is also entitled to interest on the wage arrears amount pursuant to clause 11 of Schedule 2 of the Employment Relations Act 2000, and Schedule 2 of the Interest on Money Claims Act 2016. This amount is \$26.59.

### **Determination**

[13] I order Biggs Contracting to pay wage arrears to Mr Brown of \$2,257.20 gross plus interest of \$26.59, less \$270.00 from the net amount, within 14 days of the date of this determination.

### **Costs**

[14] Mr Brown is entitled to the filing fee on the statement of problem, which he has lodged with the Authority. I order that Biggs Contracting pay Mr Brown the sum of \$71.56 within 14 days of the date of this determination.

Peter van Keulen  
Member of the Employment Relations Authority

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<sup>2</sup> 8% of \$2,090.00 is \$167.20.