

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 401/10
5287192

BETWEEN PAUL JOHN CARR
Applicant

AND DIANE TREGIDGA t/as
HOBBS ELECTRICAL
Respondent

Member of Authority: R A Monaghan
Representatives: P Carr, in person
 D Tregidga in person
Investigation Meeting: 11 June 2010
Additional information 2 July, 10 and 26 August 2010
received:
Determination: 06 September 2010

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Paul Carr says his former employer, Diane Tregidga trading as Hobbs Electrical, owes him unpaid wages and holiday pay.

Unpaid wages

[2] Ms Tregidga's business included providing Mr Carr's services as a casual labourer to the Laminex Group (Laminex), at its now-decommissioned factory in Kumeu. Mr Carr would complete Laminex' timesheets for work done at the factory.

[3] There was no written employment agreement between Ms Tregidga (or otherwise in the name of Hobbs Electrical) and Mr Carr.

[4] Mr Carr worked at Laminex between mid-2007 and September 2009. He says he has worked for more hours than he was paid for. He made the bare assertion in the statement of problem that he was paid for 24 hours per week when he worked for 32 hours per week, but did not provide any further specifics. In support he provided a printout from Laminex identifying the hours he worked there over the entire period of employment, and copies of statements from his personal bank account showing payments of wages. He also provided a copy of a final payroll record from Hobbs Electrical showing the total number of hours he worked and the total amount he was paid during the entire period of employment.

[5] From those documents Mr Carr produced this calculation:

. total hours paid for according to final payroll record	3108
. total hours worked according to Mr Carr's printout (excludes hours paid for as holiday pay)	3768.5
. total hours worked and not paid for	660.5

[6] Accordingly Mr Carr seeks payment for 660.5 hours at \$22 per hour. The amount sought is \$14,531 (gross).

[7] In her statement in reply Ms Tregidga said only that timesheets were not completed correctly or were not completed on time, resulting in mistakes. She did not provide any detail, or any documentation in support. When I asked Ms Tregidga during the investigation meeting what record she had of Mr Carr's hours of work and sought information about the basis on which he was paid, she advised that she relied on timesheets from Laminex. At my direction, after the investigation meeting Ms Tregidga provided her copies of all of those timesheets.

[8] In the course of further exchanges after the investigation meeting Ms Tregidga advised her agreement with Laminex was that Mr Carr work for 24 hours per week, and she paid Mr Carr on that basis. After a year she was informed that Mr Carr had been working for more than these hours. On an unspecified date - but which I infer from the post investigation meeting exchanges was in November 2008 - she received copies of the Laminex timesheets to that date but no back-payment was made.

Thereafter the pattern of payments indicated by the timesheets and Mr Carr's bank records suggests he was paid broadly in accordance with the hours he worked.

[9] Otherwise Ms Tregidga's position on the payment Mr Carr seeks was that Mr Carr had not provided the documentation necessary to sustain his claims and she should not be required to pay him without it.

[10] The following provisions in the Employment Relations Act 2000 applied to Ms Tregidga as Mr Carr's employer:

130 Wages and time record

(1) Every employer must at all times keep a record (called the wages and time record) showing, in the case of each employee employed by that employer, -

(a) the name of the employee;

...

(g) where necessary for the purpose of calculating the employee's pay, the hours between which the employee is employed on each day, and the days of the employee's employment during each pay period;

(h) the wages paid to the employee each pay period and the method of calculation;

[11] Ms Tregidga kept no such record. The circumstances have not been adequately explained. In the absence of the required record, the following applies:

132 Failure to keep or produce records

(1) Where any claim is brought before the Authority under section 131 to recover wages or other money payable to an employee, the employee may call evidence to show that -

(a) the defendant employer failed to keep or produce a wages and time record in respect of that employee as required by this Act; and

(b) that failure prejudiced the employee's ability to bring an accurate claim under s 131.

(2) Where evidence of the type referred to in subsection (1) is given, the Authority may, unless the defendant proves that those claims are incorrect, accept as proved all claims made by the employee in respect of -

(a) the wages actually paid to the employee;

(b) the hours, days and time worked by the employee.

[12] Mr Carr was unable to rely on any record of his employer's in formulating his claim, inevitably prejudicing his ability to bring an accurate claim in respect of the wages owed to him.

[13] Ms Tregidga did not produce any information in support of her assertions about the arrangement with Laminex, or any other information to support the assertion that Mr Carr was to work 24 hours per week. Similarly she did not provide any detail in support of her assertion that timesheets were not completed correctly or were not completed on time. Having said that, it appears from Mr Carr's bank statements that at least some errors were identified and corrected and the principal issue concerns the allegation that Mr Carr was to work for 24 hours per week only.

[14] Overall Ms Tregidga has not proved that Mr Carr's claim is incorrect.

[15] I therefore find for Mr Carr and order Ms Tregidga to pay him \$14,531 (gross) as unpaid wages.

Holiday pay

[16] Ms Tregidga accepted that Mr Carr was owed holiday pay, but said the dispute about Mr Carr's hours of work meant she was unable to quantify the total amount owed and so she made no payment at all. During the investigation meeting she agreed to pay to Mr Carr an amount based on the wages he had received, which according to a payslip dated 30 May 2010 was \$2,895.38 (nett)

[17] Mr Carr has since advised his receipt of a payment of \$2,895.38. There will be no further order in that respect.

[18] However I have found that Mr Carr's wages were underpaid. Mr Carr is entitled to holiday pay in respect of the underpaid amount, which I calculate as $8\% \times \$14,531 = \$1,162.48$.

[19] Payment is ordered accordingly.

Summary of orders

[20] Dianne Tregidga is ordered to pay to Mr Carr the sum of:

- a. \$14,531 (gross) as underpaid wages; and

b. \$1,162.48 (gross) as underpaid holiday pay.

[21] I further order that interest be paid on the above sums calculated as 5% from the date of this determination to the date of payment.

Costs

[22] Costs are reserved.

[23] The parties are invited to agree on the matter. If they seek a determination from the Authority any party seeking an order shall have 28 days from the date of this determination in which to file and serve a memorandum setting out what is sought and why. The other party shall have a further 14 days in which to file and serve a reply.

R A Monaghan

Member of the Employment Relations Authority