

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2015] NZERA Auckland 188  
5534302

BETWEEN

SHAMAL CHAND  
Applicant

A N D

PAYLESS PRINT LIMITED  
Respondent

Member of Authority: T G Tetitaha  
Representatives: Applicant in person  
No appearance for Respondent  
Investigation meeting: 24 June 2014 at Auckland  
Date of Oral Determination: 24 June 2015  
Date of Written Determination: 24 June 2015

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**ORAL DETERMINATION OF THE AUTHORITY**

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- A. Clause 12 Schedule 2 of the Employment Relations Act 2000 (the Act) provides that if, without good excuse shown, any party to a matter before the Authority fails to attend or be represented I may proceed to determine this matter in their absence.**
- B. I am satisfied there is no good cause shown for the failure to attend by Payless Print Limited and I may continue to hear this matter today.**
- C. Payless Print Limited is ordered to pay Shamal Chand wage arrears pursuant to s.131 of the Act totalling \$9,086.18. This encompasses net wages of \$7,347.08, KiwiSaver of \$474.30 and gross holiday pay of \$1,264.80.**
- D. Payless Print Limited is also ordered to pay costs to Mr Chand of \$71.56 being reimbursement of his filing fee.**

## **Employment Relationship Problem**

[1] Mr Chand seeks payment of outstanding wages and holiday pay.

### **Facts**

[2] Mr Chand started work as a web developer on 24 March 2014. His agreed hours of work were five days per week from Monday to Thursday and a Saturday. The hours worked were 30 hours per week at \$15.50 per hour. His gross wage was \$465 per week.

[3] On 7 April 2014 Mr Chand received a draft employment agreement. It set out the above hours of work and hourly pay rate. Mr Chand signed the agreement, but for reasons unknown to him, the respondent employer refused to do so. This was despite the fact they produced the draft and gave it to him for signing.

[4] Mr Chand was asked to draft a new employment agreement. Which he did encompassing the same terms and conditions.

[5] Between 14 April and 15 October 2014 Mr Chand received wages of approximately \$5,233.60 - \$4,888.60 was by way of direct credit to his bank account and a one-off payment of \$345 in cash.

[6] On or about 11 November 2014 both parties signed the re-drafted employment agreement.

[7] By 17 November 2014 Mr Chand was unhappy and terminated his employment. He had not been paid wages since 15 October 2014 and was suspicious that he had been underpaid at various times the amounts he was due. At the end of his employment he had taken no holidays and had received no payment for his leave that was outstanding.

### **Issues**

[8] The issues are relatively simple. What wage arrears, if any, are owed to Mr Chand?

## **Determination**

[9] I have the power to proceed if any party fails to attend an investigation meeting. Clause 12 Schedule 2 of the Employment Relations Act 2000 (the Act) provides that if, without good excuse shown, any party to a matter before the Authority fails to attend or be represented I may proceed to determine this matter in their absence.

[10] On 15 December 2014 the statement of problem was served by registered post to the respondent party's registered office in accordance with Schedule 2 of the Act. A John Debrujin confirmed receipt of the statement of problem and requested a 14 day extension to file a reply. This was granted, but no statement of reply has been received.

[11] Notices for this investigation meeting and my Minute dated 8 June 2015 were delivered to the respondent company's registered office at 533 Great South Road, Papatoetoe, South Auckland, on 15 June 2015. They were received by a person who identified himself to the process server as an employee of the respondent.

[12] The Support Officer has today attempted to contact the respondent to ascertain its whereabouts and whether it was intending to attend today's investigation meeting. I am told a representative of the respondent denied knowledge of the investigation meeting and service of this matter. Further, they refused to attend today's hearing to advise this to the Authority.

[13] It is now 11.16am. Given the above efforts to serve and contact the respondent to explain its failure to attend, I am satisfied there is no good cause shown for the failure to attend by Payless Print Limited and I may continue to hear this matter today.

[14] This is an application for payment of wage arrears pursuant to s.131 of the Act. There is no appearance by the respondent and consequently there is no wage or leave records produced. Where there is failure to produce a wage record, I may accept as proved all claims made by the applicant employee in respect of the wages actually paid to the employee and the hours, days and time worked pursuant to s.132 of the Act.

[15] Mr Chand has produced evidence of his wages owed in the form of an individual employment agreement and his bank account records. He gave me evidence that his tax code, as confirmed by IRD, was MSL. He never worked any statutory holidays, but assumed they had been paid when the statutory holiday fell on his usual days of work between Monday to Thursday and Saturday. He never took any leave or holidays.

[16] Mr Chand further says that he was signed up to KiwiSaver but was never given an option by the respondent of opting out when he started work. He assumed KiwiSaver would be deducted and paid accordingly.

[17] Taking into account the evidence before me, I make the following findings.

[18] The parties agreed to terms and conditions of employment for Mr Chand to work 30 hours per week and receive \$15.50 per hour. By my calculations, Mr Chand's net weekly wage should have been \$370.02. This is calculated by taking a gross wage of \$465 less PAYE of \$69.27, a student loan deduction of \$11.76 and KiwiSaver deductions of \$13.95.

[19] Mr Chand would have been required to pay 3% in deductions from his wage each week for KiwiSaver. The respondent employer would have been required to match that.

[20] Mr Chand received \$5,233.60 in wages during the period of his employment.

[21] 34 weeks wages at \$370.02 net per week totals \$12,580.68 that Mr Chand should have received. By deducting the amounts he did receive of \$5,233.60, he is owed \$7,347.08 net.

[22] Mr Chand should have received the benefits of the 3% KiwiSaver employer contribution towards his KiwiSaver account. KiwiSaver at 3% of his gross pay equates to \$13.95 per week. Over 34 weeks the amount of KiwiSaver that he should have been paid was \$474.30.

[23] Mr Chand is also owed holiday pay of 8% on the gross wages of 34 weeks at \$465 per week. The gross wage received should have been \$15,810; 8% of that amount is \$1,264.80.

## **Orders**

[24] Accordingly, I make the following orders. Payless Print Limited is ordered to pay Shamal Chand wage arrears pursuant to s.131 of the Act totalling \$9,086.18. This encompasses net wages of \$7,347.08, KiwiSaver of \$474.30 and gross holiday pay of \$1,264.80.

[25] Payless Print Limited is also ordered to pay costs to Mr Chand of \$71.56 being reimbursement of his filing fee.

**T G Tetitaha**  
**Member of the Employment Relations Authority**