

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2011] NZERA Christchurch 199
5335520

BETWEEN JUNXUAN CHENG
Applicant

A N D LIANG GUO
Respondent

Member of Authority: Helen Doyle
Representatives: Junxuan Cheng, In Person
Liang Guo, In Person
Telephone Conference: 8 November 2011
Further Information from Respondent: 18 November 2011
Date of Determination: 14 December 2011

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Junxuan Cheng, known as Jason, says that when he worked for Liang Guo as a courier driver he was incorrectly paid.

[2] Liang Guo, known as Alex, agreed after Labour Inspector Jeanie Borsboom analysed the relevant material and communicated with the parties that there is a gross amount owing to Jason of \$1393.52. The net amount is \$1158.92. That amount is made up of wage arrears assessed on the minimum wage and holiday pay.

[3] The outstanding issue before the Authority is the method of payment. Alex says that he cannot afford to pay the full amount owing and can only pay \$5.00 per week to Jason. Jason says that is unacceptable.

[4] The Authority held a telephone conference with Jason and Alex. During the telephone conference Alex agreed to provide some financial information detailing his

income and outgoings that would then be forwarded to Jason for his comment. Both parties were happy for the Authority to make a decision in this matter on the material provided without the need for an investigation meeting.

[5] Alex duly supplied some financial information and bank statements. This material was forwarded on to Jason. Jason emailed an Authority support officer with a number of relevant questions about the financial documentation and asked that the questions be forwarded onto Alex. A support officer forwarded the questions to Alex advising in her email that the Authority would also find the answers to the questions helpful. Alex responded that he did not have the time to explain what Jason had requested and that he could only afford five dollars per week. He did invite either the Authority or Jason to telephone him.

[6] The support officer advised Jason and Alex that the Authority would either make arrangements to have a further telephone conference or otherwise proceed to make a determination as discussed during the telephone conference.

[7] This matter requires finalisation as soon as possible. I shall therefore proceed to determine the issue.

Determination

[8] Section 131(1A) of the Employment Relations Act 2000 came into effect on 1 December 2004. It provides that the Authority may order payment of arrears of wages or other money to the employee by instalments, but only if the financial position of the employer requires it.

[9] I am therefore required to consider the financial position of Alex who owes money to his previous employee Jason to decide whether payment of the agreed sum should be by instalment or in full. If payment is to be by instalment then I am to determine how much could reasonably be paid.

[10] The only evidence of income is a letter from New Zealand Couriers dated 11 December 2009 that provides the particular courier run is expected to earn approximately \$6250 plus GST per month. Alex has then attached details of

outgoings in his business current account and his own account from between September 2011 to November 2011. Although he describes some of the expenses as monthly they do not seem to appear every month.

[11] There are other documents provided showing Alex applying for a payment plan for ACC levies, an infringement notice for driving outside the distance stated on the licence in the sum of \$3209, road users charges of \$702.54 per month, service charge on a vehicle of \$142.33, rates, a rental van, provisional tax and a credit line for furniture. Alex also attached a contract for a relief driver who is required to be paid monthly.

[12] I am satisfied when I consider the financial position of Alex that it is such to require payment to Jason by instalment of the amount he owes him. \$5.00 is far too low. Jason is entitled to have his wages paid as a matter of priority.

[13] The figures provided by Alex do not satisfy me that an instalment plan with the amount owing to Jason paid off in full at the end of a six month period is unreasonable.

[14] Jason is entitled to have added to the sum of \$1158.92 (net) his filing fee of \$71.56 making a total owing of \$1230.48.

[15] I order Liang Guo (Alex) to pay to Junxuan Cheng (Jason) the sum of \$1230.48 being the sum of \$1158.92 (net) and reimbursement of a filing fee of \$71.56 by way of six monthly payments of \$205.08. These payments are to be made as follows:

- | | |
|--------------------|----------|
| • 30 December 2011 | \$205.08 |
| • 20 January 2012 | \$205.08 |
| • 20 February 2012 | \$205.08 |
| • 20 March 2012 | \$205.08 |
| • 20 April 2012 | \$205.08 |
| • 20 May 2012 | \$205.08 |

[16] Failure to make the payments as set out will entitle Junxuan Cheng to claim payment of the full amount or any unpaid balance.

[17] Junxuan Cheng is to provide to the Authority as soon as possible details of his bank account into which he would like the above sums to be deposited. This information will be provided to Liang Guo to enable him to set up an automatic payment each month into Junxuan Cheng's account.

Helen Doyle
Member of the Employment Relations Authority