

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 63/09  
5147207

BETWEEN HEATHER MARIE DAIKEE,  
JAMES KEVIN HOGAN,  
JOHNNY ALDERDICE,  
THERESA MacPHERSON  
Applicants

AND OWEN BATT  
Respondent

Member of Authority: James Crichton  
Representatives: Both parties in person  
Investigation Meeting: 20 February 2009 at Christchurch  
Determination: 18 May 2009

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Ms Daikee, Ms MacPherson, Mr Hogan and Mr Alderdice (the applicants) allege that they are owed various amounts of unpaid wages by the respondent (Mr Batt).

[2] Mr Batt has not filed a statement in reply but has to some extent participated in the Authority's investigation. In particular, Mr Batt attended the investigation meeting in person and played some role in endeavouring to resolve the outstanding issues.

[3] Because the wages claim of each of the applicants is factually different, I will deal with each of them separately in this determination. However, before getting to an individual analysis of the respective wages claims, I wish to describe the process of the investigation.

[4] Once the statement of problem was filed on 19 December 2008, a telephone conference with Ms Daikee, one of the applicants, and Mr Batt was held on 9 January 2009.

[5] That telephone conference agreed that an investigation meeting would take place on 20 February 2009 and that investigation meeting did proceed, but only two of the four applicants were able to be present, namely Ms Daikee and Mr Alderdice.

[6] At the investigation meeting, there was a useful exchange between Ms Daikee and Mr Batt on the one hand, and Mr Alderdice and Mr Batt on the other. Mr Batt indicated that he had *paperwork at home* which would assist him to reconcile the claim especially from Ms Daikee. It was agreed that there should be further telephone discussions between Ms Daikee and Mr Batt with a view to reconciling the differences between them and, failing that reconciliation, the Authority would make a decision based on the evidence available.

[7] In the result, both parties contacted the Authority to advise that the discussions proposed had not been undertaken.

[8] By letter dated 25 March 2009, the Authority confirmed that those proposed discussions were to be concluded by 6 April 2009 (as between Ms Daikee and Mr Batt), and that I was to speak with the two applicants who were not present at the investigation meeting (namely, Ms MacPherson and Mr Hogan) and advise Mr Batt of their respective wages claims.

[9] The Authority's letter of 25 March 2009 directed that all matters between Mr Batt and the applicants were to be resolved by agreement before 17 April 2009 or, failing that, the Authority would make its determination based on the information available.

[10] On 23 April 2009, I issued further directions, first quantifying the claim by Mr Alderdice, secondly indicating that the wages claim originally brought by Mr Hogan had been withdrawn, and thirdly quantifying the wages claim of Ms MacPherson.

[11] The notice of direction in respect of those three matters gave Mr Batt 14 days from the date of the notice to respond and he has not done so.

[12] It follows that Mr Batt has, despite having a proper opportunity to do so, not filed responses or dealt appropriately with all of the claimants. Mr Batt has, from time to time, engaged in the Authority's process, but has not given these matters the priority that they deserve.

[13] In relation to the wages claim of Ms Daikee, Mr Batt generated a document dated 14 April 2009 in which he identified that Ms Daikee is owed a gross amount of unpaid wages in the sum of \$409.62 comprising a PAYE amount of \$68.73 and a net payment to Ms Daikee of \$384.89.

[14] Ms Daikee's response to Mr Batt's document of 14 April 2009 was to reject Mr Batt's calculation, rely broadly on her original calculations on which the statement of problem was based, and by documents received in the Authority on 22 April 2009 and 1 May 2009, support those calculations of hers by reference to detailed calculations and copies of her bank statements.

[15] In relation to the wages claim of Mr Alderdice, the Authority was advised on 11 May 2009 that Mr Batt had confirmed that the claim made by Mr Alderdice was accepted and that fortnightly reductions in the amount owed would commence shortly.

### **Ms Daikee's claim**

[16] In the statement of problem filed on 19 December 2008, Ms Daikee claimed a sum of \$2,060.88 as reimbursement for various items she had paid on Mr Batt's behalf together with an unpaid wages claim of \$12,151.53.

[17] As to the items of reimbursement claimed, Mr Batt broadly accepted at the investigation meeting that those amounts are indeed owed by him to Ms Daikee.

[18] However, there was dispute at the investigation meeting about the wages owed and, based on the document dated 14 April 2009 but received in the Authority on 20 April 2009, Mr Batt says that Ms Daikee is owed only a further amount of \$340.89 net which of course is a world away from her claim of \$12,151.53 gross.

[19] Ms Daikee, however, responded appropriately to Mr Batt's communication and by facsimile dated 22 April 2009, she set out the total amount still owing which reduces somewhat the original claim made in the statement of problem. According to

Ms Daikee's calculations, the total amount of wages owed is \$10,731.20 gross and the total amount of reimbursement owed is \$2,059.90 and only \$1399.98 of the aggregate sum has been paid, all of it as wages. On this basis, Ms Daikee considers that Mr Batt still owes her a **total** amount of \$11,391.12 being a combination of reimbursing sums (for which she is entitled to a net payment), and a significant amount of unpaid wages (for which she is entitled to only a gross payment)

[20] In order to determine the correct amount owing by Mr Batt to Ms Daikee, it will be helpful to analyse the areas of dispute between them. First, I am absolutely satisfied that Mr Batt accepted that he owed Ms Daikee the reimbursing sums she referred to, and that he made that commitment in my presence at the investigation meeting on 20 February 2009. The only basis on which there was to be a further inquiry into the reimbursing sums was in respect of Mr Batt's conviction that an amount that he paid Ms Daikee on 20 August 2007 included one of the reimbursing items. Mr Batt makes no comment whatever about that in the document that he provided to the Authority on 20 April 2009. Ms Daikee, on the other hand, has provided me with a careful analysis of the amounts she considers are still owed to her and in addition provided copies of her relevant bank statements. I am satisfied as a consequence that Ms Daikee is owed a total amount of \$2,059.90 net as reimbursement of expenses met by Ms Daikee on behalf of Mr Batt.

[21] Turning to the unpaid wages, It is clear that Ms Daikee has reduced the amount claimed from Mr Batt in respect of his treatment of sick pay but, as she observes in the material that she has filed in the Authority, Mr Batt has failed, in his calculations, to take account of his obligation to pay for statutory holidays in accordance with the Holidays Act 2003, and he has sought to identify a payment which Ms Daikee says is not wages, as if it were partly wages and partly other reimbursing sums.

[22] As to the first issue, I am absolutely satisfied that Ms Daikee has correctly identified the amounts she is entitled to and in the absence of any more explicit records being available from the employer to disprove Ms Daikee's calculation, I make clear that I prefer her evidence on the question of the amount of money that she is actually owed by way of unpaid wages.

[23] On the question of whether Mr Batt has reduced the total amount of unpaid wages by making a substantial payment to Ms Daikee, again it seems to me the

evidence is clear. Ms Daikee has provided me with copies of her relevant bank statements. She ran two bank accounts with two different banks. The bank account which received the deposit of \$7,000 from Mr Batt on 20 August 2007 is a Kiwibank account with her partner. Her wages did not go into that account but went into another joint account with the National Bank.

[24] The \$7,000 payment into the Kiwibank account is clearly labelled *loan sawmilling*. There is no suggestion that this amount includes any wages component. Ms Daikee's evidence is that this sum was for the use of a portable sawmill which she owned and which Mr Batt was able to use for the cutting of Oregon timber for post and rail fencing jobs.

[25] I accept Ms Daikee's evidence that this payment was for the use of her portable sawmill and was not, as Mr Batt contends, partly wages. I reach that conclusion in part because the way the bank records the payment is inconsistent with a sum including wages (the label referring to *loan sawmilling*), and also because I accept Ms Daikee's evidence that her wages were always paid into the other (National Bank) account.

[26] As to those wages payments in Ms Daikee's National Bank account, each of those payments is labelled by that bank in the same way as being a payment of wages and I think it most unlikely that the \$7,000 paid by Mr Batt to Ms Daikee can be partly wages and partly reimbursement of other costs given the factors I have just described.

[27] I am particularly clear from Ms Daikee's evidence that she was never paid wages into the Kiwibank account and the evidence before the Authority shows a multiplicity of wages amounts paid into the other account at the National Bank. Further, Mr Batt contends that he did not lodge \$7,000 exactly into Ms Daikee's account, but \$8,000. There is no record of such a lodgment into either of Ms Daikee's accounts.

[28] Further and finally on this point, Ms Daikee contends that Mr Batt's records disclose that on 20 August 2007 (the date of the \$7,000 lodgment), Mr Batt paid her \$7,228.16 gross wages. She disputes that because at the time she was only owed \$1,959.50 gross wages and, in any event, she never received a lodgment of \$7,228.16.

That being the position, I prefer Ms Daikee's evidence to Mr Batt's on the basis that it is both more credible and more detailed.

[29] It follows that there will be orders in favour of Ms Daikee for unpaid wages of \$9,331.22 gross and unpaid reimbursing amounts totalling \$2,059.90 net.

**Mr Alderdice's claim**

[30] Mr Alderdice's claim as expressed in the Statement of Problem is for an amount of unpaid wages totalling \$1,894. However, at the investigation meeting on 20 February 2009, it became apparent that that amount was not the correct amount and indeed was the amount that Mr Alderdice had been paid of the total owing and that the amount still owed was \$2,196.50.

[31] The Authority has been advised that Mr Batt has contacted Mr Alderdice and confirmed his acceptance of the outstanding amount and indicated that fortnightly reductions in the amount payable will commence shortly.

[32] There will be an order against Mr Batt and in favour of Mr Alderdice in the sum of \$2,196.50 gross.

**Ms MacPherson's claim**

[33] Ms MacPherson told me that she worked for Mr Batt as a fencer from August to December 2007 and that she was only ever paid for part of her work during that period. Ms MacPherson thinks that she is owed somewhere between \$1,000 and \$2,000 but because she was paid a per metre rate and Mr Batt never told her what the metre rate was, she could not accurately calculate her entitlement.

[34] Ms MacPherson also told me that she was supposed to be paid a travel allowance of about \$20 a day and it appeared that this was effectively paid in kind with a credit being established at the local garage which Ms MacPherson could draw against for the cost of running her car. However, because Mr Batt did not settle the garage account, that arrangement failed and Ms MacPherson was left to fund her own travel as well.

[35] In the absence of any proper records of the employment or any engagement from Mr Batt in relation to Ms MacPherson's claim, all the Authority can do in Ms MacPherson's case is to make some estimate of her entitlement. Because

Ms MacPherson said that she thought that she was owed between \$1,000 and \$2,000 and because there was also an entitlement to a travel allowance which was, in the main, unpaid, I think the proper course of action is to fix an amount of \$1,250 gross as the sum outstanding in unpaid wages to Ms MacPherson and I will make an order accordingly.

### **Determination**

[36] I direct that Mr Batt is to pay the following sums:

- (a) An amount of \$2,059.90 being a reimbursing amount to Ms Daikee;
- (b) An amount of \$9331.22 gross in unpaid wages owing to Ms Daikee;
- (c) An amount of \$2,196.50 gross in unpaid wages owing to Mr Alderdice;
- (d) An amount of \$1,250 gross in unpaid wages owing to Ms MacPherson.

James Crichton  
Member of the Employment Relations Authority