

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 286
5452894

BETWEEN JAMES DENYER, LABOUR
INSPECTOR
Applicant

A N D RAJ DREAMLAND HOMES
LIMITED
Respondent

Member of Authority: Anna Fitzgibbon

Representatives: James Denyer, Labour Inspector (Applicant)
No appearance for the Respondent

Investigation Meeting: 3 July 2014 at Auckland

Date of Determination: 7 July 2014

DETERMINATION OF THE AUTHORITY

- A. Raj Dreamland Homes Limited is ordered to pay the Labour Inspector, for the use of Mr Stephen De Vrije the sum of \$2,006.87 gross in outstanding wages and \$264.55 gross in outstanding holiday pay within 14 days of the date of this determination.**
- B. Raj Dreamland Homes Limited is to pay the Labour Inspector the sum of \$250 in costs and \$71.56 being the cost of the filing fee within 14 days of the date of this determination.**

Non-appearance of respondent

[1] Mr Utesh Raj, sole director and shareholder of the respondent company, Raj Dreamland Homes Limited (Dreamland Homes) filed a statement in reply to the statement of problem on 14 April 2014, but failed to attend the investigation meeting on 3 July 2014.

[2] I am satisfied that Dreamland Homes was properly served with the correspondence from the Authority together with a notice of investigation meeting.

[3] In those circumstances, I proceeded to investigate the matter in the absence of Dreamland Homes.

Employment relationship problem

[4] Mr Stephen De Vrije, was employed by Dreamland Homes as a carpenter from October 2013 until the termination of his employment in November 2013. Mr De Vrije subsequently complained to the applicant, Mr James Denyer (the Labour Inspector) about non-payment of wages and holiday pay to him by Dreamland Homes.

[5] The Labour Inspector conducted a full and thorough investigation and determined that Dreamland Homes was liable to pay Mr De Vrije wages pursuant to the Minimum Wage Act 1983 and holiday pay pursuant to the Holidays Act 2003.

[6] The Labour Inspector contacted Mr Raj, director of Dreamland Homes, on numerous occasions seeking payment of the unpaid wages and holiday pay and warned him that if payment was not made the matter would be referred to the Employment Relations Authority.

[7] The wages and holiday pay were not paid and on 21 March 2014 the Labour Inspector filed a statement of problem in the Employment Relations Authority seeking a determination that Dreamland Homes pay Mr De Vrije \$2,006.87 gross in outstanding wages, \$264.55 gross in outstanding holiday pay and \$71.56 being the Authority's filing fee.

[8] On 14 April 2014 Mr Raj filed a statement in reply on behalf of Dreamland Homes claiming that Mr De Vrije had been sent to Dreamland Homes from D & H Carpentry School for work experience. Mr Raj stated that he offered to pay petrol money and a lunch allowance, but never agreed to employ Mr De Vrije.

[9] The parties attended a mediation in order to resolve matters, but this was unsuccessful and the matter proceeded to the Authority for investigation and determination.

[10] Mr De Vrije says he completed his course at D & H Carpentry School and undertook some work experience at Dreamland Homes. However, shortly after commencing at Dreamland Homes, Mr De Vrije says Mr Raj offered, and he accepted, full time employment. Two other students who were undertaking work experience but who had not completed their training at D & H Carpentry, Nick and Fish, were not offered full time employment.

[11] Mr De Vrije was paid cash of \$250 on Friday each week regardless of the number of hours worked by him. Mr Raj agreed to sort out any PAYE in respect of Mr De Vrije's wages. After an approach to Mr Raj about the level of his wages, Mr De Vrije's wages were increased to \$300 a week. Mr De Vrije only received wages of \$300 for his final week of work.

[12] During his employment at Dreamland Homes, Mr De Vrije worked 41.5 hours in his first week, 46 hours in his second week, 50 hours in his third week, 54 hours in his fourth week and 49 hours in his fifth week.

[13] After negotiating more pay, Mr De Vrije was told not to return to work. The Labour Inspector has calculated that for the five week period worked by Mr De Vrije he is owed \$2,006.87. This sum represents the shortfall in wages paid and wages which should have been paid by Dreamland Homes pursuant to the Minimum Wage Act. The Labour Inspector has calculated holiday pay owing of \$264.55.

[14] I am satisfied that Mr De Vrije was employed by Dreamland Homes and is owed the moneys claimed by the Labour Inspector. I order Dreamland Homes to pay the Labour Inspector, for the use of Mr De Vrije the following sums within 14 days of the date of this determination:

- (a) \$2,006.87 gross in outstanding wages;
- (b) \$264.55 gross in outstanding holiday pay.

Costs

[15] The investigation meeting took approximately half an hour. In this situation a minimal amount in recognition of the costs incurred by the Labour Inspector in bringing this application is appropriate. Dreamland Homes is ordered to pay an additional sum of \$250 in costs to the Labour Inspector pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

[16] I further order Dreamland Homes to reimburse the Labour Inspector the \$71.56 filing fee.

[17] The sums awarded in this determination, including costs and reimbursement of filing fee, are to be paid by Dreamland Homes within 14 days of the date of this determination.

[18] Pursuant to Regulation 26 of the Employment Relations Authority Regulations 2000, the Labour Inspector is to be provided with a certificate of determination, sealed with the seal of the Authority recording that Dreamland Homes is ordered to pay to the Labour Inspector for the use of Mr De Vrije the sums set out in this determination.

Anna Fitzgibbon
Member of the Employment Relations Authority