

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 77/08  
5078222

BETWEEN                      ROSHNI DEVI  
   Applicant

AND                              MANHAAS INDUSTRIES  
   (2000) LIMITED,  
   MANHAAS INDUSTRIES  
   LIMITED,  
   SEEMA LAL TRADING AS  
   SNACKS FOOD LIMITED,  
AND                              MICHAEL MANHAAS  
   Respondents

Member of Authority:      P R Stapp

Representatives:            Rick Pinfold for Applicant  
   Andy Ogilvie & Lisa Thomson for Respondents

Investigation Meeting:     20 May 2008 at Wellington

Determination:              29 May 2008

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]      This is a wage arrears and holiday pay claim. The respondents have denied the applicant's claims.

**Issues**

[2]      Who was the applicant's employer? Is the applicant owed any wages for the hours she says she worked, and for cleaning overalls, dust coats and tea towels, and wages for cooking for Mr Manhaas?

[3]      During the Authority's investigation four factual matters emerged:

- (i) Did Mr Manhaas undertake in 2005 to pay Ms Devi, when she left New Zealand, her alleged hours she says she worked and was not paid for during her employment?
- (ii) Did Mr Manhaas agree in 2005 to retrospectively pay Ms Devi \$12.50 per hour from the start date of her employment in 2003?
- (iii) Was there an agreement to pay Ms Devi extra hours for cleaning overalls, dust coats and tea towels?
- (iv) Did Mr Manhaas personally employ Ms Devi to cook his meals?

### **The Facts**

[4] Ms Devi came to New Zealand from Fiji. Ms Devi started work on 18 June 2003. She was issued with work permits that ran out in 2006 when she was required to leave New Zealand. Her last day of work was on 29 November 2006.

[5] She was employed to make Indian sweets. There was reference made in her first two employment agreements that her duties were “*general duties to make Indian sweets, teach other staff sweet making and preparation and to take care that the sweet was prepared to specification and flavours applied according to set recipes*”. That clause disappeared from later employment agreements. A job description referred to in subsequent employment agreements was not produced.

[6] Ms Devi had a number of employment agreements during her employment. The first was provided in Fiji and was signed off by Michael Manhaas, company director for and on behalf of Manhaas Industries (2000) Limited. The next agreement was signed off in New Zealand, after the work permit was issued, and it was again signed by Mr Manhaas on behalf of Manhaas Industries (2000) Limited. The next agreements were prepared when Ms Devi applied to extend her work permit in 2005: the first agreement was dated 9 July 2005 and signed off by Seema Lal, the office manager, for and on behalf of Manhaas Industries (2000) Limited, and the second signed employment agreement was dated 5 September 2005 and was also signed off by Seema Lal for and on behalf of Manhaas Industries (2000) Limited, and included the rate of \$12.50 per hour.

[7] Seema Lal prepared and paid the wages. The agreement dated 9 July 2005 made provision for an hourly rate of \$9.50. However, Mr Manhaas agreed to increase the rate to \$12.50 per hour to assist Ms Devi's application for her work permit when it was declined by the Immigration Service. Also, Ms Devi's accommodation was subsidised and she paid \$40 per week for accommodation provided. The record of the rent was kept in the wages books produced.

[8] Ms Devi has relied on her own record of the hours she says she worked, the extra hours for cleaning and has claimed her pay should have been \$12.50 per hour at all times. Mr Pinfold has prepared a claim on Ms Devi's behalf identifying the money Ms Devi says she is owed.

### **Determination**

[9] I find that Ms Devi's employer was Manhaas Industries (2000) Limited.

[10] My reasons for this finding are as follows:

- There are a number of signed employment agreements that applied: they were all signed off on behalf of Manhaas Industries (2000) Limited. The evidence of the employment agreements assumes a considerable amount of weight given that Ms Devi accepted that Manhaas Industries (2000) Limited was the employer on the documents.
- Mr Manhaas, and Seema Lal trading as Snack Foods Limited, never represented themselves personally to be Ms Devi's employer. They have been emphatic that her employer was Manhaas Industries (2000) Limited.
- I find that Ms Devi and Mr Pinfold have not understood the law of the identity of the employer. They may be excused for this, but the overwhelming evidence is that Manhaas Industries (2000) Limited was Ms Devi's employer. Ms Devi can not rely on the undisclosed principle that Mr Manhaas and Seema Lal were her employers personally because they never represented themselves to be her employer, and Manhaas Industries (2000) Limited was properly disclosed in the

employment agreements. Indeed it was also disclosed on the applications for the work permit. Ms Devi accepted that evidence.

- Ms Devi and Mr Pinfold can not rely on a sign at the factory premises at 20 Titoki Street, Otaki where she worked, that read “Snack Foods (Otaki) Ltd”, because Mr Manhaas and Seema Lal provided explanations why that name was used. Their explanation was that Manhaas Industries (2000) Limited acquired the factory and converted the plant to manufacture Indian style snack foods. In doing so the name of Snack Foods (Otaki) Ltd was retained to continue making and selling Snack Foods (Otaki) Ltd’s product lines and to use the same name for supply contracts. I find this was a plausible explanation since it was not challenged and not contradicted.
- Snack Foods (Otaki) Limited is not a cited party.
- The sign with the name Snack Food Co (Otaki) Limited at the factory at 20 Titoki Street, Otaki is not proof that there was another employer. I accept that the factory was one of the premises that Ms Devi worked at, but the place and premises where she worked, and who her employer is, are distinguishable in law.
- It is confusing about what companies have been involved because Mr Manhaas has used generic letterhead that refers to “MILs” (Manhaas Industries Limited). However, Mr Manhaas’s and Seema Lal’s evidence pointed out the roles of the different companies, and their personal involvement in those companies. Ms Devi did not contradict their evidence.
- The Inland Revenue Department’s and Immigration Service’s use of labels such as “Snack Foods” and “Manhaas Industries”, and relied upon by Ms Devi as to who her employer was, are not reliable for the employment setting given the existence of Manhaas Industries (2000) Limited.
- Ms Devi’s claim that Seema Lal trading as Snack Foods Limited was her employer seems to be based on Seema Lal being the person who prepared and paid out the wages. Snack

Foods Limited is not a limited liability company. Seema Lal was also an employee paid by Manhaas Industries (2000) Limited. Just because she prepared and paid out the wages does not mean she was the employer personally when the employment agreements clearly identified the employer as Manhaas Industries (2000) Limited.

- It was not challenged that the wages were paid by Manhaas Industries (2000) Limited. This is supported by the wage books and Seema Lal's evidence that she paid the wages for Manhaas Industries (2000) Limited.

[11] The next issue related to whether or not Mr Manhaas agreed to retrospectively pay Ms Devi \$12.50 per hour from the start date of her employment?

[12] Ms Devi could not give any direct evidence of any undertaking from Mr Manhaas, who negotiated the wages, to retrospectively pay her \$12.50 per hour for her hours worked from the start date of her employment, when her rate was increased in 2005. It is not plausible that Mr Manhaas would have agreed in 2005 to retrospectively pay Ms Devi an increased hourly rate from the day she started given the existence of the individual employment agreements. Those agreements provide the wage rates applying and there is nothing in the last agreement to apply retrospectively.

[13] Ms Devi has relied upon the Immigration Service's decision to grant the work permit on the basis of the \$12.50 per hour that Mr Manhaas agreed to pay Ms Devi and help her application. The fixing of wages is a negotiable matter between the parties and in the absence of any agreed retrospective clause Ms Devi can not rely on applying the approval of her work permit for that purpose. In any event the work permit was not retrospective.

[14] A further issue related to whether or not Mr Manhaas made any undertaking to pay Ms Devi her hours she says she worked but was not paid for during her employment, including pay for extra hours for cleaning overalls, dust coats and tea towels.

[15] Ms Devi could not provide any direct evidence of any agreement being reached by her and Mr Manhaas on any arrangements for being paid for hours that she worked but which she had not been paid, when she left New Zealand.

[16] I accept that from 2005 Ms Devi kept her hours of work in her own note book and that these differ from the hours recorded by Seema Lal in the employer's wage and time and holiday books. Also, after she left her employment she made an estimate of 2 hours work per day for cleaning overalls, dust coats and tea towels.

[17] Ms Devi signed for her wages in the employer's wage and time and holiday books produced. She never complained or raised her claims with anyone else before she left her employment, including her supervisor Mr Rakesh Datt. There is no evidence of any discussion with anyone about any arrangements outside the terms of the employment agreement.

[18] Seema Lal told me that mistakes were made in Ms Devi's and Mr Datt's pay. Also Seema Lal told me she fixed any mistakes that were brought to her attention by Mr Datt and Ms Devi. It was confirmed that such mistakes were raised with Seema Lal orally by Ms Devi and Mr Datt. I find that Ms Devi at the time she signed for her wages accepted them as the wages due and paid. It just does not seem plausible that she would not have told anyone else of any side arrangement with Mr Manhaas, especially Seema Lal who prepared and paid the wages and Mr Datt her supervisor. Seema Lal told me she knew nothing about any such arrangement. Mr Datt contradicted Ms Devi's evidence on the hours Ms Devi says she worked and the time taken to wash any overalls, dust jackets and tea towels and he says this was done during work time.

[19] Manhaas Industries (2000) Limited has not been able to reasonably provide the factory and warehouse time book to verify the wage and time and holiday record books produced. There has been nothing devious proved about the employer's failure to produce the factory and warehouse time record book, although the failure to produce it is unsatisfactory for comparison purposes. Also, the employer's failure to properly explain why it has not been produced is unsatisfactory. The employer's failure to produce it and verify the wage time and holiday records is one factor that I have weighed against the others set out above.

[20] Also, both sides have a dispute over their involvement and role in Ms Devi's application to extend the time of her work permit. This is not determinative of the claim, I hold.

[21] On balance Ms Devi's claim has not been established, I hold.

[22] The final issue related to whether or not there was any arrangement made for Ms Devi to cook for Mr Manhaas. I conclude that there was no agreed arrangement made on hours and wages for Ms Devi to cook for Mr Manhaas. I am supported in reaching this conclusion by the request from Ms Devi and Mr Pinfold for the Authority to settle her hours and a rate of pay. As a matter of law that was up to the parties to settle and the Authority has no jurisdiction to settle hours and wages. There was evidence given of Ms Devi cooking for Mr Manhaas once, but without any details of the time and the date, this is not enough to confirm any routine arrangement entered into, I find.

[23] It follows that Ms Devi has not been able to prove that Mr Manhaas employed her personally to cook his meals. In addition her evidence was contradicted by Mr Manhaas and Rakesh Datt. Ms Devi had written employment agreements during her employment that makes it very unlikely that Mr Manhaas would have employed her personally without some written agreement. Ms Devi could not point to any other arrangements to support her claim. For example she never kept any record of days, dates and the time she says she cooked for him. The claim must be dismissed because Ms Devi has not been able to establish it.

[24] Seema Lal's representative, who has been representing all the respondents, requested me to strike out her name from the proceedings. I declined to make such an order earlier in the proceedings because there was an issue about who Ms Devi's employer was and Seema Lal's role required some clarification. She has requested consideration for costs. I have decided it is appropriate that she remain a party to the proceedings if any costs are pursued.

[25] The applicant's representative, Mr Pinfold submitted to the Authority a lengthy document making various allegations and submissions on breaches of individual

employment agreements and defects in the agreements and alleged personal grievances. These were never incorporated into a statement of problem and lacked detail in regard to a factual background involving Ms Devi in her employment, and her employment ending when her work permit expired and she was required to leave New Zealand. Without any details of the times and dates of any alleged offences and breaches, any causes of action may well now be outside the 12 months required to bring such claims for breaches under the Act. Indeed a letter, prepared on her behalf by her first representative at the time, referred to a personal grievance, and failed to provide sufficient detail of any grievance for it to meet the requirements of being raised properly with the employer. Even as background there has been insufficient detail for me to use such allegations and to reach any meaningful conclusion that might assist Ms Devi.

[26] Finally, Mr Pinfold has endeavoured to help his client by providing the detail of the calculations for the claims. I have not needed to use these and have not needed to refer to them in this determination because of the factual findings reached.

### **Orders of the Authority**

[27] The applicant's claims are dismissed.

[28] Costs are reserved for submissions if necessary.

P R Stapp  
Member of the Employment Relations Authority