

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURAU ROHE**

[2024] NZERA 666  
3299799

BETWEEN JAGDISH KUMAR DHOBI  
Applicant

AND EXPERT ENTERPRISE  
LIMITED  
Respondent

Member of Authority: Marija Urlich

Representatives: Kirankumar Patel, for the Applicant  
Mayur Jajadiya, Respondent director

Investigation Meeting: 21 October and 5 November 2024

Determination: 11 November 2024

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Mr Dhobi worked for Expert Enterprise Limited (EEL) as a retail supervisor for just over six weeks from 15 June 2023 until his employment ended on 24 July 2023. He seeks wage arrears for 502.23 hours worked, holiday pay, interest and reimbursement of the Authority filing fee of \$71.55. At the investigation meeting he confirmed he makes no claim arising from the circumstances of his employment ending and that he seeks no award of penalties.

[2] EEL accepts Mr Dhobi has not been paid for hours he worked. It says it will pay him arrears owed and wishes to settle this matter but does not agree with the hours claimed. It says he worked 227 total hours.

[3] The parties have attended mediation and engaged with the Labour Standards team of MBIE regarding this employment relationship problem.

### **The Authority's investigation**

[4] On 12 September 2024 the Authority made directions identifying the issues for investigation and determination and scheduling an investigation meeting to be held by audio-visual link on 7 October. The parties were also directed to file any relevant information by 30 September including that EEL file Mr Dhobi's wage, time and holiday records. EEL did not file the records as directed.

[5] On the morning of 7 October Mr Jajadiya, the sole director of EEL contacted the Authority and advised he was unable to attend the scheduled investigation meeting due to ill health. An adjournment was granted and the investigation rescheduled to 21 October. At the start of that investigation meeting, it became apparent an interpreter would be required, the meeting was adjourned and by consent rescheduled to 5 November.

[6] At the 5 November investigation meeting Mr Dhobi and Mr Jajadiya gave evidence. The Authority was assisted by an interpreter of the Gujarati language. As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and information received.

### **Issues**

[7] The issues for investigation and determination are whether:

- (i) wage arrears are due and owing to Mr Dhobi for work performed for EEL;
- (ii) holiday pay arrears are owed;
- (iii) the Authority should exercise its discretion and order interest calculated and paid on any ordered wage and/or holiday pay arrears; and
- (iv) Mr Dhobi is entitled to be reimbursed the filing fee of \$71.55.

## **The parties' employment agreement**

[8] Mr Dhobi and EEL entered a written employment agreement (the employment agreement) on 18 November 2022. The employment agreement provides Mr Dhobi would:

- (i) work 40 hours per week between 6.30am and 8pm Monday to Sunday;
- (ii) be paid an annual gross salary of \$58,240; and
- (iii) be paid monthly into a bank account of his nomination.

[9] With respect to additional hours worked outside the usual hours of work, the employment agreement provided Mr Dhobi may be required to perform such hours for which he would be paid his usual hourly rate or provided time off.

## **Background**

[10] Mr Dhobi and Mr Jajadiya first met through a mutual friend in 2021 in their home country of India. They stayed in touch and in late 2022, when Mr Dhobi was studying in Singapore, Mr Jajadiya advised there was an opportunity for him to work with EEL. Mr Dhobi said he wanted to come to New Zealand to better support dependent family members and so took up the opportunity with EEL. Mr Dhobi had previously worked in a bank for three years and holds a degree in business administration.

[11] Mr Dhobi's work visa took about 7 months to process following the grant of which he arrived in New Zealand in June 2023 to commence employment with EEL. He stayed with Mr Jajadiya for a few days and was then driven to EEL's Wellsford superette (the superette) on 15 June to start work. Mr Dhobi started work that day and worked at the superette for the rest of his employment with EEL. During this time, he stayed in rental accommodation arranged by Mr Jajadiya. He lived with two other EEL employees who also worked at the superette, one of whom was the manager. Mr Dhobi said he had not met these people before he started work with EEL. He said he travelled to and from work each day with these co-workers in one of their vehicles. He said most days they arrived at work before the shop opened at 6am and he worked until closing, often finishing work at about 9.30pm. He said he worked as directed by the manager and was not aware of a roster. He described to the Authority the work he performed at

the superette including tasks required at opening, work during the day and tasks required to close at the end of the trading day. He said he was mostly unable to take breaks during the work day, but this changed towards the end of his employment when a complaint was made to Mr Jajadiya.

[12] To support his claim for hours worked Mr Dhobi relies on a travel record extracted from his mobile telephone. He says these records support his hours of work claim because they show his travel to and from work each day. The records show on his first day of employment travel by car at 2.11pm from an address in Auckland, which the companies register records as an address relevant to EEL, to the superette arriving at 4.08pm and remaining there until 8.59pm, then a 1.6 km journey by car to an address in Wellsford, which was Mr Dhobi's shared rental accommodation. The remaining records show on most days a round trip from Mr Dhobi's accommodation to the location of the superette, with unbroken periods of time from about 6am to 9.30pm spent in that location. There are seven days which do not follow this same pattern:

- (i) Thursday 15 June, the first day of Mr Dhobi's employment as described above;
- (ii) Monday 19 June which records walking from the location of the superette at 1.39pm to the Wellsford Caltex where a MacDonalds restaurant appears to be located and returning to the location of the superette at 2.15pm;
- (iii) Thursday 22 June and Friday 23 June, which only records time travelled between the rental accommodation and the Wellsford Ready Roast;
- (iv) Sunday 25 June, which records no travel from the rental accommodation;
- (v) Friday 14 July which records time spent in the location of the superette from 5.59am to 10.30am and then travel by car to a different address in Mt Roskill; and
- (vi) Monday 24 July which records a car journey from the location of the superette to Mr Jajadiya's address in Auckland having remained in the superette location from 5.59am to 11.49am.

[13] Mr Jajadiya says the hours claimed by Mr Dhobi are excessive and a record extracted from a mobile phone cannot be relied on because such records are susceptible

to manipulation. He says Mr Dhobi was not told to work the extra hours claimed, there was no need for him to work the long hours claimed because there were two other employees working at the superette and Mr Dhobi was a trainee. He says the time record EEL provided can be relied on because the superette manager provided it to him when Mr Dhobi raised a concern with the Labour Standards team. He confirmed he did not know day to day what hours Mr Dhobi worked but he understood from conversations with the superette manager during Mr Dhobi's employment that his hours were less than 40 per week.

[14] EEL's time record shows total hours worked of 227 over a five-week period from Thursday 15 June to 23 July 2023. It has columns for date, day, start and finish times, break and total working hours. The column of total working hours are less a half hour unpaid break where hours more than 6 are recorded as worked. The time the break was taken is not recorded. The time record records days off on Saturdays 24 June, 1 and 8 July and Friday 14 July. It records split shifts were worked on 20 and 22 July. The time record records Mr Dhobi worked from 7am to 3pm on 15 June.

[15] Mr Jajadiya did not know how the time record had been compiled or what base information the manager used to compile it. It does not appear contemporaneous with Mr Dhobi's work for EEL and was not supported by a time sheet or other such record. On the face of the document there is nothing to indicate it is Mr Dhobi's time record – it does not record his name or other identifying details such as where the work was performed - though I accept the days correspond with the period Mr Dhobi worked for EEL. The time record is not a wage record – it does not record the pay for the hours recorded and that cannot be cross referenced to a pay slip or other payment record because EEL did not pay Mr Dhobi during his employment and has not paid him to date. The hours recorded in the time record average 45 per week which exceeds the agreed hours of work in the employment agreement.<sup>1</sup> The time record does not record how those additional hours are paid or are to be paid. It is unclear why the time record shows Mr Dhobi worked 7am to 3pm on 15 June when there is no dispute between the parties he was travelling from Auckland to Wellsford at this time and no suggestion the parties agreed such travel time would be paid. For the avoidance of doubt EEL's time record is not a compliant wage and time record for the purposes of s 130 of the Act.<sup>2</sup>

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<sup>1</sup> These hours exceed those the manager told him Mr Dhobi was working.

<sup>2</sup> Employment Relations Act 2000, s 130.

[16] EEL has failed to produce wage, time and leave records on request. It did not provide such to the Labour Standards team when Mr Dhobi raised his concerns with that agency though EEL did provide that agency with the time record. A Labour Standards officer wrote to Mr Dhobi on 19 February 2024 recording they had provided EEL with education on keeping accurate time and wage records. By direction dated 12 September 2024, the Authority required EEL to file information including a complete wage, time and holiday record for Mr Dhobi. This has not occurred. There is no doubt this failure has prejudiced Mr Dhobi's ability to bring an accurate claim for wage arrears under s 131 of the Act – he has had to rely on his memory of hours worked and location information extracted from his mobile telephone.

[17] In such circumstances s 132 of the Act and s 83 of the Holidays Act 2003 provides where an employer has failed to produce a wage, time and holiday record as required by those Acts and that failure has prejudiced the employee's ability to bring an accurate claim, the Authority may accept as proved all claims of the employee in respect of wages or holiday pay paid and hours, days and time worked by the employee.

[18] Mr Dhobi's record of his hours worked is preferred to the time record provided by EEL. EEL's record is not a compliant wage, time and holiday record. Mr Jajadiya was unable to give direct evidence to challenge Mr Dhobi's claims as to the hours he worked, he provided no basis to the claim the mobile phone information had been manipulated and given all the aspects of the employment environment, including EEL's ostensible involvement with Mr Dhobi's accommodation and travel to work, I am satisfied he has worked the hours claimed with the following amendments based on a reasonable assessment of the information before the Authority including that extracted from the mobile telephone – less hours claimed for Thursday 22 June and Friday 23 June, rounding down the daily total by 30 minutes to accommodate time between the vehicle arriving at and leaving the location and commencement and completion of work and giving EEL the benefit of the doubt an unpaid meal break of 30 minutes was provided at least every day Mr Dhobi worked.

[19] For the above reasons, Mr Dhobi has established he worked a total of 437.33 hours over 36 days for EEL for the period 15 June to 24 July 2023.

### **Are arrears of wages due and owing?**

[20] Mr Dhobi is entitled to be paid by EEL for hours worked at the agreed rate of pay of \$28 per hour.<sup>3</sup>

[21] Expert Enterprises Limited is ordered to pay Mr Dhobi wage arrears totalling \$12,245.24 (gross) because the evidence establishes between 15 June 2023 and 24 July 2023, he worked 437.33 hours for EEL for which he should have been paid at the rate of \$28.00 per hour and these arrears remain unpaid. The payment is to be made within 14 days of the date of this determination.

### **Are holiday pay arrears due and owing?**

[22] An employee is entitled to holiday pay when their employment ends.<sup>4</sup> Mr Dhobi has not received this entitlement. He is entitled to be paid holiday pay on the wage arrears calculated at eight per cent of total gross earnings.

[23] Expert Enterprises Limited is ordered to pay Mr Dhobi \$979.62 in holiday pay entitlements within 14 days of the date of this determination.

### **Should interest be ordered on the arrears?**

[24] The Authority has the power to award interest under clause 11 of the Second Schedule of the Act. Interest is to reimburse someone for the loss of use of monies to which there is an established entitlement.

[25] It is appropriate where a person has been deprived of the use of money to make an award for interest. Mr Dhobi is entitled to an award of interest on the wage arrears awarded including the holiday pay component calculated from the last day of his employment, being the date the entitlement crystallised.<sup>5</sup>

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<sup>3</sup> The parties' employment agreement records Mr Dhobi would be paid for every hour worked at his usual hourly rate or have time off. There was no evidence Mr Dhobi had reached agreement with EEL to take time off for additional hours worked. The hourly rate of \$28 is derived from the annual salary divided by the agreed hours of work.

<sup>4</sup> Holidays Act 2003, s 27.

<sup>5</sup> Why Mr Dhobi was not paid during his employment remains unclear. That he had not provided a bank account and IRD number to EEL did not void its obligation to pay him under the terms of the employment agreement for hours worked.

[26] Expert Enterprises Limited is ordered to pay interest, using the civil debt interest calculator, within 14 days of this determination, as follows:<sup>6</sup>

- (i) Interest on the sum of \$13,224.86 calculated from Monday 24 July 2023 until the date payment is made in full.<sup>7</sup>

[27] Interest is payable in accordance with Schedule 2 of the Interest on Money Claims Act 2016.

### **Reimbursement of the filing fee**

[28] To lodge his claim in the Authority Mr Dhobi was required to pay a filing fee of \$71.55. His claim is successful and EEL is ordered to reimburse Mr Dhobi the cost of the filing fee.

### **Summary of orders**

[29] Within 14 days of the date of determination Expert Enterprise Limited is ordered by the Authority to pay Jagdish Kumar Dhobi the following sums:

- (i) wage arrears of \$12,245.24;
- (ii) holiday pay arrears of \$979.62; and
- (iii) the filing fee of \$71.55

[30] Within 14 days of the date of determination Expert Enterprise Limited is ordered by the Authority to calculate and pay Jagdish Kumar Dhobi interest of the total arrears as provided in [26] above.

Marija Urlich  
Member of the Employment Relations Authority

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<sup>6</sup> [www.justice.govt.nz/fines/civil-debt-interest-calculator](http://www.justice.govt.nz/fines/civil-debt-interest-calculator).

<sup>7</sup> Total wage arrears of \$12,245.24 plus total holiday pay arrears of \$979.62 = \$13,224.86.