

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2015] NZERA Auckland 129  
5537457

BETWEEN                      BAK ZOEN HUI  
   Applicant  
  
A N D                              NZ FIBRE SOLUTIONS  
   LIMITED  
   Respondent

Member of Authority:      James Crichton  
  
Representatives:            Applicant in person  
   No appearance for the Respondent  
  
Investigation Meeting:      7 May 2015 at Auckland  
  
Date of Determination:      8 May 2015

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     The applicant (Mr Hui) alleges that he is owed wages from his employment by the respondent (NZ Fibre Solutions). NZ Fibre Solutions has not engaged effectively with the Authority's process save to allege that the company "*has closed down*" and is "*going into liquidation as we speak*" and that there is "*no money or assets so not sure what to do*".

[2]     If it is the position that liquidation is in prospect, it is certainly not the legal position as at the day before my investigation meeting because a search of the Companies Office register discloses that NZ Fibre Solutions is still registered and nothing in the register discloses liquidation. That issue is important, of course, because if the company was in liquidation, then Mr Hui could only proceed with his claim with the consent of the liquidator.

[3]     With the exception of emails contending that NZ Fibre Solutions has no money, has closed down, and is going into liquidation, there has been no engagement

from the respondent employer and in particular no attendance by the employer at the Authority's investigation meeting.

[4] Because of the contact that has been established with NZ Fibre Solutions, I am satisfied that the company knew about the Authority's process, knew about the investigation meeting and simply chose to avoid engagement with the Authority's process.

[5] As a consequence, the only sworn evidence I have concerning Mr Hui's claim is his own evidence; there is nothing by way of sworn testimony from NZ Fibre Solutions. However, there are email exchanges which are before me which I am satisfied do not dispute that the money claimed by Mr Hui is owed but simply say that there is no ability by NZ Fibre Solutions to pay the money due and owing. In particular, in response to a further request for payment of the outstanding wages from Mr Hui, NZ Fibre Solutions caused an email dated 19 September 2014 to be sent in reply to Mr Hui which says in part that "*...we can make payment this Friday although it may not be the full 3 weeks but I can make another payment the following week until you are paid all the wages.*"

[6] I think I am entitled to read that email as confirming the employer's view that three weeks money was owed and that no issue was taken about Mr Hui's various attempts to get paid what he was owed. This is so notwithstanding the fact that on the evidence I heard, no payment was made consistent with that email.

[7] Moreover, Mr Hui produced evidence at the investigation meeting which appears to suggest that other staff have been paid even although he has not.

[8] Put shortly, I am satisfied that it would be an affront to justice not to proceed to deal today with Mr Hui's claim and that I have sufficient credible evidence to enable me to reach an appropriate conclusion on the matter.

[9] Mr Hui's claim is very simple. He alleges that he worked for NZ Fibre Solutions for four calendar weeks, that that employment commenced on 14 July 2014 and concluded on 8 August 2014, and that he was paid for one week of those four weeks only, that payment being made on 29 July 2014 for the first week and was in the net amount of \$486.16. Mr Hui says that he worked 60 hours a week for a rate of \$15 per hour which would mean that he was paid \$900 a week gross. That amount does not tally with the credit amount he received in the one and only payment made

for the first week of the employment, but I think the explanation for the difference is that the hours Mr Hui worked in the first week were significantly less than the hours he worked in subsequent weeks.

[10] There is nothing before the Authority from NZ Fibre Solutions to confirm the wage and time records relative to Mr Hui's employment. I am satisfied on the evidence I heard from the applicant that NZ Fibre Solutions failed to produce a wage and time record relative to his employment, that that failure prejudiced Mr Hui's ability to bring an accurate claim before the Authority under s.131 of the Employment Relations Act 2000 (the Act) and that therefore I am entitled to accept as proved Mr Hui's claim for three weeks' wages each at \$900 gross: s.132 of the Act applied.

### **Determination**

[11] For reasons already canvased, I direct that NZ Fibre Solutions Limited is to pay to Mr Hui the sum of \$2,700 gross in lost wages, that NZ Fibre Solutions Limited is to account to the Inland Revenue Department for the tax on those weekly payments each calculated at \$900 gross being \$15 per hour for 60 hours worked per week, and that NZ Fibre Solutions Limited is to pay to Mr Hui the sum of \$71.56 being the Authority filing fee.

[12] A Certificate of Determination is to issue with this determination.

### **Costs**

[13] There is no issue as to costs as Mr Hui acted for himself.

James Crichton  
Member of the Employment Relations Authority