

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI Ā TARA ROHE**

[2023] NZERA 749
3193519

BETWEEN NICHOLAS HALL
Applicant

AND KIWIRAIL LIMITED
Respondent

Member of Authority: Sarah Kennedy-Martin

Representatives: Mary-Jane Thomas, counsel for the Applicant
Matthew McGoldrick, counsel for the Respondent

Investigation Meeting: On the papers

Submissions received: 21 November 2023 from Applicant
24 November 2023 from Respondent

Determination: 14 December 2023

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] In a determination dated 2 November 2023 the Authority found in favour of Mr Hall and ordered payments of lost wages and compensation.¹

[2] There was an inconsistency in the order for lost wages. On 21 November 2023 the Authority advised Ms Thomas and Mr McGoldrick that it may reopen the investigation on its own volition under clause 4 of schedule 2 of the Employment Relations Act 2000 to deal with this issue.

¹ *Nicholas Hall v KiwiRail Limited* [2023] NZERA 646.

[3] Both parties confirmed they were in agreement about the outcome but the Respondent helpfully noted there were several options open to the Authority to address the inconsistency.

Reopening

[4] In the circumstances I am satisfied that I should reopen the investigation for the limited purpose of making the payment for lost wages set out at paragraphs 100 and 106(a) of the determination. I accept that failure to reopen and make these changes could cause issues with the enforcement of this determination.

Change to orders

[5] The amount of lost wages ordered by the Authority and set out at paragraphs 100 and 106(a) is changed to \$6290.00 (gross).

Costs

[6] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. If they are not able to do so and an Authority determination of costs is needed, any party seeking costs may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of the written determination in this matter. From the date of service of that memorandum, the other party will then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted. The parties could expect the Authority to determine costs and ask to do so on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.

Sarah Kennedy-Martin
Member of the Employment Relations Authority