

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA148/10  
5293414

BETWEEN	AKRAM HAMZE Applicant
AND	SAFFRON RESTAURANT LIMITED First Respondent
AND	NASER EBRAHIMI Second Respondent
AND	JAVAD HOSEINZADEH Third Respondent

Member of Authority:	G J Wood
Representatives:	Akram Hamze on his own behalf Naser Ebrahimi and Javad Hoseinzadeh for the First Respondent, and on their own behalf
Investigation Meeting:	16 March 2010 at Auckland
Further information:	22 March 2010
Determination:	30 March 2010

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The applicant, Mr Hamze, claims \$6,700 in underpaid wages and holiday pay. The respondents deny that they owe Mr Hamze any money, but instead believe that he owes them money for board, lodgings, travel and food. They have, however, made no formal claim over this. Indeed, none of the respondents filed a statement in reply, or provided any information whatsoever before the commencement of the investigation meeting. I did, however, grant the respondents leave to respond out of time and to

defend the matter, which they did. The respondents' lack of involvement in the investigation process, however, clearly hampered the Authority's investigation.

[2] At the investigation meeting, Mr Ebrahimi and Mr Hoseinzadeh attended on their own behalf and on behalf of the first respondent (Saffron). They claimed not to be aware of the claim, despite having received the notice of investigation meeting. Indeed, as was clear from my questioning of them and the papers they had with them, they were well aware that Mr Hamze was making claims against them. While only Mr Hoseinzadeh admitted receiving the full papers from the Authority, he had clearly informed Mr Ebrahimi of the investigation meeting and Mr Hoseinzadeh's failure to read the papers is no defence.

[3] Similarly, the respondents wished to have taken into account alleged counterclaims against Mr Hamze for board, lodgings, travel and food given to him by one or other of the respondents during the course of his employment. Given that Mr Hamze had no notice of these claims, I declined to consider them.

### **Facts and Findings**

[4] Mr Hamze was employed at the restaurant as an executive chef between 1 March 2009 and 15 January 2010. The employment agreement is set out as being between Party A (Mr Hamze) and Party B, namely:

*Saffron Restaurant, 532 Te Atatu  
Saffron Restaurant Limited  
Phone 09 ....  
Javad Hoseinzadeh - ...  
Naser Ebrahimi - ....*

[5] The employment agreement then states:

*This employment agreement is entered into on February 26 2009, between Party B, with its principal place of address located at 532 Te Atatu, Te Atatu Peninsular, and Party A, and shall be effective as of March 1st 2009.*

[6] The agreement is signed by Messrs Hamze, and also by Messrs Ebrahimi and Hoseinzadeh:

*From [I presume meaning for] and on behalf of Saffron Restaurant Limited: Saffron Restaurant, 532 Te Atatu*

[7] The restaurant was a start up enterprise and was not particularly successful. It was sold at a loss in early 2010.

[8] Mr Hamze's salary was \$1,400 fortnightly net. He was always paid by cheque from the account of Saffron.

[9] Mr Hamze was clear in his evidence that his employer was Saffron Restaurant Limited. Messrs Ebrahimi and Hoseinzadeh are the sole directors of Saffron. While Mr Hamze was quite entitled to bring his claims against all three respondents, given the strange wording of the employment agreement vis-à-vis Party B, I conclude (as was consistent with his evidence and that of Messrs Ebrahimi and Hoseinzadeh, and other indicators such as payment) that his employer was Saffron Restaurant Limited, which operated the Saffron Restaurant, consistent with the items quoted above.

[10] The claims against Messrs Ebrahimi and Hoseinzadeh personally must therefore be dismissed.

[11] Mr Hamze claims that Mr Ebrahimi withheld his wages for the first three weeks of his employment as a bond, to ensure that Mr Hamze would stay at the restaurant, as he did not know him. Mr Ebrahimi denies this, but I prefer Mr Hamze's evidence. Messrs Ebrahimi and Hoseinzadeh undertook to provide, by 17 March, Saffron's financial records, which would prove whether Mr Hamze was in fact paid for that period, but have not done so. By contrast, Mr Hamze's bank statements were provided and they show that no payments from Saffron were banked by him over the first month of his employment (Mr Hamze accepted that he worked the first 10 days or so for free, helping set up the restaurant). I therefore accept Mr Hamze's claim that he is owed \$2,100 by Saffron for the first three paid weeks of his employment.

[12] Mr Hamze also claims that he was not paid properly in the period between 18 November and Christmas 2009, with the sum of \$2,100 being underpaid. It was accepted that the restaurant was undergoing severe financial difficulties at that time. Mr Ebrahimi acknowledged that full pay may not have been made for the November/December period but that he would have to check Saffron's financial records to see if that was correct. He has failed to provide those records and so I accept Mr Hamze's evidence that he was not properly paid, as is consistent with his bank records, and is thus owed another \$2,100.

[13] Finally, Mr Hamze claims that he was not paid holiday pay when he resigned. He relies on his bank statements and also a letter signed by himself and Messrs Ebrahimi and Hoseinzadeh dated 1 December, which states:

*Notice of employment agreement termination expiry date 24/12/2009*

*This is to confirm my previous notice to you (employment agreement termination, dated November 1/2009).*

*My last working day will be 24/December/2009 and the last day of my employment will be the last day of my annual leave which is January/15/2010.*

*Please note: I reserve all my legal rights.*

*Please sign this letter and keep copy for yourself.*

*I wish you very successful business.*

[14] This letter was signed by Mr Hamze and countersigned by Messrs Ebrahimi and Hoseinzadeh. Mr Hoseinzadeh claims that although he did sign the document he did not read it, and Mr Ebrahimi accepted that holiday pay is legally owed. However, Messrs Ebrahimi and Hoseinzadeh claim that Mr Hamze had agreed to waive his right to holiday pay, as other staff at Saffron had done. Any such agreement would be unenforceable, because the Holidays Act cannot be contracted out of, and therefore Mr Hamze is also entitled to \$2,100 net under that heading.

### **Determination**

[15] I order the first respondent, Saffron Restaurant Limited, to pay to the applicant, Mr Akram Hamze, \$6,300 net, together with \$70 expenses for his filing fee.

**G J Wood**  
**Member of the Employment Relations Authority**