

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 81/10  
5291881

BETWEEN                      KHALIL AFZAL HANJRA  
Applicant

AND                              MONOPOLIZ SUPPLIES  
LIMITED T/A APNA  
BAZAAR  
Respondent

Member of Authority:      Robin Arthur

Representatives:            Applicant in person  
No appearance for Respondent

Investigation Meeting:      22 February 2010

Determination:              22 February 2010

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]      Khalil Afzal Hanjra says Monopoliz Supplies Limited (MSL) has not paid more than \$17,000 due to him as the balance of wages for the period from 9 May to 8 December 2009.

[2]      In lodging his application to the Authority Mr Hanjra initially sought a direction to mediation. MSL's director Salim Shaikh sought and was granted an extension of time to lodge a statement in reply. However MSL did not lodge a statement in reply by the due date and the Authority set the matter down for an investigation meeting.

[3]      In the late afternoon of 19 February 2010 Evgeny Orlov, a barrister, sent the Authority applications for the adjournment of the meeting and for leave to file a statement of reply out of time. Adjournment was sought on the basis that MSL had

only obtained legal representation that week and counsel instructed had a prior commitment at the notified time of the investigation meeting.

[4] A further ground for adjournment was said to be that the Authority did not have jurisdiction to determine Mr Hanjra's claim. A statement of reply from MSL, also lodged by facsimile transmission late on 19 February, suggested that Mr Hanjra's claim for unpaid wages was a personal grievance raised outside the required 90 day period.

[5] The application for adjournment was brought to my attention this morning. I had a support officer of the Authority advise Mr Orlov that the application was declined. I declined it for the following reasons:

- (i) the Authority's file shows MSL was served with Mr Hanjra's claim at its registered office on 6 January and with notice of the Authority's investigation meeting on 4 February 2010. MSL was well aware of the claim because on 18 January Mr Shaikh sought an extension of time to lodge a statement in reply. MSL had ample time to prepare, seek representation and attend the meeting.
- (ii) It is not acceptable for counsel to take late instructions and then seek adjournment on the basis of not being available for the fixture. As MSL knew the date of the investigation meeting when it was belatedly instructing counsel, it should have instructed a representative who was available. Mr Orlov or his instructing solicitor could have assisted MSL to do so.
- (iii) Mr Hanjra's claim is a wage claim. It is a matter in which the Authority has jurisdiction under s131 of the Employment Relations Act 2000 (the Act). An action for recovery of wages is subject to a six year limitation period (s142 of the Act). Mr Hanjra's claim is not a personal grievance subject, in most circumstances, to a 90-day limitation period. And even if it were a personal grievance, MSL's statement in reply says Mr Hanjra last worked in its business in the week ending 28 November 2009. That would mean his application lodged in the Authority on 5 January 2010, if it could be taken as raising a grievance, was well within that period.

[6] There was no attendance for MSL at the investigation meeting. Given the circumstances outlined above I am satisfied that it had adequate notice and opportunity to attend and be represented. No good cause for that failure being shown I have proceeded to investigate and determine Mr Hanjra's wage claim, exercising the Authority's powers under clause 12 of Schedule 2 of the Act.

[7] In doing so I have taken account of the statement in reply lodged late on 19 February, despite MSL's earlier failure to reply by an extended deadline.

### **Mr Hanjra's evidence**

[8] On the basis of affirmed oral evidence from Mr Hanjra I find that he started worked at the shop owned by MSL on a part-time basis from 9 May 2009. At Mr Shaikh's request, Mr Hanjra began working full-time from mid-June and continued to do so through to early September. In August he sought leave from the job in order to travel to Pakistan for his marriage. He had intended staying longer in Pakistan but at the request of Mr Shaikh, Mr Hanjra returned to New Zealand on 14 November. He then worked in the shop from 18 November until he resigned and finished work on 8 December.

[9] Through this period Mr Hanjra was not paid for the hours that he worked at the rate of \$15 an hour that Mr Shaikh had promised. Despite several promises to pay wages owed, Mr Shaikh made only part payments – one in cash of \$200 and four payments by cheque totalling \$3131. Mr Shaikh made repeated promises to pay wages due but did not keep those promises. At one point Mr Hanjra sold his car and lived off the proceeds of \$2000 while waiting for his wages to be paid.

[10] I have considered some photocopied documents attached to MSL's statement in reply which appear to refer to payment of some wages and tax deductions. They may relate to part payments made to Mr Hanjra but do not disprove his entitlement to payment of his full wages from MSL.

[11] Mr Hanjra kept a handwritten record of his hours and prepared a schedule of wages due to him for work done in the period from 9 May to 8 December 2009. After deducting part wages paid, the total remaining due but unpaid totals \$17,756.50. I

find that Mr Hanjra is entitled to an order for MSL to pay that amount to him, less any applicable income tax deductions. In the absence of evidence from MSL I am not able to consider whether any orders are necessary for that payment to be made by instalments.

### **Determination**

[12] MSL is to pay \$17,756.50 as arrears of wages due to Mr Hanjra by no later than 14 days after the date of this determination.

[13] Mr Hanjra was entitled to be paid wages regularly during 2009. Instead he has had to wait a long time for a considerable amount of money due to him without other means to meet his living costs. In those circumstances I consider it is appropriate that an order for the payment of interest also be made (refer clause 11 of Schedule 2 of the Act). I think it fit to order interest at the rate of 4.72% (today's 90-day bill rate plus two percent) on the amount of \$17,756.50 for the 75-day period from 9 December 2009 to 22 February 2010. Interest for that period is \$171.75.

[14] If the full amount of wages due are not paid by 9 March 2010, MSL is also to pay Mr Hanjra the additional amount of \$2.29 per day as daily interest on the amount of \$17,756.50.

[15] Mr Hanjra is also entitled to reimbursement of his fee for lodging his claim in the Authority.

### **Summary of orders made**

[16] **MSL is to pay to Mr Hanjra by no later than 9 March 2010, the following amounts:**

- (i) \$17,756.50 as arrears of wages (less any applicable income tax); and**
- (ii) \$171.75 as interest on that amount for the period from 9 December 2009 to 22 February 2010; and**
- (iii) \$70.00 as reimbursement of his lodgement fee.**

[17] If the arrears of wages are not paid by 9 March 2010, MSL is also to pay to Mr Hanjra an additional \$2.29 per day as interest until the wages are paid in full.

Robin Arthur  
Member of the Employment Relations Authority