

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2018] NZERA Christchurch 72
3021162

BETWEEN GORDON WILLIAM JACK
Applicant

A N D T H TRANSPORT LIMITED
Respondent

Member of Authority: Peter van Keulen

Representatives: Wenyuan Zhang for Applicant
Ian Gilbert for Respondent

Investigation Meeting: On papers

Date of Determination: 22 May 2018

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Gordon Jack worked for T H Transport Ltd from 1 April 2014 until 31 October 2016. Mr Jack claims that during this time, T H Transport underpaid him and this is the basis of his wage arrears claim.

[2] Mr Jack's wage arrears claim was for a shortfall in wage payments of \$5,678.82.

[3] T H Transport disputed this and carried out an audit of all payments it had made to Mr Jack. This audit showed that T H Transport had paid all wage payments to Mr Jack, being

a net payment of \$811.26 each week. There were also some additional payments made to Mr Jack, which appear to be for extra hours worked.

[4] The problem with the audit is T H Transport did not have access to wage and time records¹ but simply made the calculation based on bank accounts and financial statements. It assumed the regular weekly payment reflected the set hours worked per week and the additional payments represented overtime worked.

[5] Mr Jack did not have access to any documents that recorded the hours he worked so he had trouble accepting the audit. His position was that he had worked overtime and he was not sure he had been paid for that overtime.

[6] In a case management conference on 21 March 2018 this issue was discussed and Mr Jack's representative advised that Mr Jack would accept T H Transport's audit save for two things. Mr Jack disputed receiving one wage payment and required proof of payment and he asked for the holiday pay calculation to be verified.

[7] As a result, I issued a notice of direction on 21 March 2018 recording that T H Transport was to provide proof of payment of the disputed wage payment and it was to set out the holiday calculation. Once this was received, the parties were to discuss matters to see if the wage arrears claim was resolved. If the wage arrears claim was not resolved then Mr Jack was to set out what remained in dispute.

[8] T H Transport provided the information set out in my notice of direction. The consequent discussion between the parties, through an exchange of correspondence, appeared to indicate that all matters were resolved. In particular Mr Jack's representative stated that Mr Jack accepted that wage payments had been made and whilst he might still dispute the hours worked he was not going to take that further. He also accepted the calculation of holiday pay based on 8% of total earnings. However, Mr Jack still queried the annual leave owed to him at the termination of his employment.

[9] In a subsequent case management conference the issue of holiday pay was discussed. Because of that discussion, I was unable to see what was in issue. In fact, it appeared that

¹ This is not a case where wage and time records have not been kept rather the records just cannot be accessed. There are, in my view, valid reasons for T H Transport not being able to have access to its wage and time records, these reasons being outside of the company's control and for which it cannot be held responsible.

Mr Jack had most likely received an overpayment of holiday pay as T H Transport was unable to access its wage and time records and its holiday and leave records and calculated the holiday pay owing on the basis that Mr Jack did not take any holidays.

[10] I decided that if Mr Jack would not accept the holiday pay calculation then I could determine this matter on the papers, relying on the documentary evidence submitted with the statement of problem and the statement in reply, the correspondence submitted by the representatives for both parties and the submissions made in the two case management conferences. In addition, I would also consider any other submissions Mr Jack wanted to make and I gave him a final opportunity to clarify and set out any remaining basis for his wage arrears claim.

[11] This was set out in a notice of direction dated 10 May 2018.

[12] Mr Jack has failed to provide any further submissions as directed and I will determine this matter on the papers.

Determination

[13] I am satisfied that T H Transport has paid Mr Jack correctly for the hours he worked.

[14] I am also satisfied that T H Transport has paid Mr Jack the correct amount for holiday pay due at the end of his employment.

[15] Mr Jack's claim for wage arrears is dismissed.

Costs

[16] Costs are reserved.

[17] T H Transport has lodged submissions on costs. Mr Jack has until 5 June 2018 to lodge any submissions in reply. After 5 June 2018 I will determine whether costs should be awarded to either party.

Peter van Keulen
Member of the Employment Relations Authority

