

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2024] NZERA 594
3276519

BETWEEN JORDYN JONES
Applicant

AND INSTALL PRO LIMITED
Respondent

Member of Authority: Helen Doyle

Representatives: The Applicant in person
No appearance for the Respondent

Investigation Meeting: 26 September 2024 in Auckland

Determination: 7 October 2024

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Jordyn Jones worked for Install Pro Limited (Install Pro) from in or about April 2023 until 18 August 2023 as a window furnishing installer.

[2] Install Pro was incorporated on 30 March 2023 and carries on the business of window furnishing installations. During the period Ms Jones worked for Install Pro the sole director and the person she reported to was Vijayraj Bhosale.

[3] Ms Jones worked for two other companies undertaking window furnishing work with no break in continuity, before Install Pro. Mr Bhosale was the director of both of these companies. The first company was Kiwi Window Furnishings Limited (in liquidation). A written contract agreement signed by Ms Jones was provided by Kiwi Window Furnishings Limited (in liquidation). Kiwi Window Furnishing Limited was placed into liquidation on 5 May 2023. The second company Ms Jones worked for was Kiwi Installs Limited (Kiwi Installs) which was incorporated on 9 March 2022. No written agreement was entered into at that time. Ms Jones said that she then understood

from Mr Bhosale that work was to be undertaken for Install Pro rather than Kiwi Installs due to publicity for that company from a television show. There were no issues with payment whilst Ms Jones worked for Kiwi Window Furnishings Limited (in liquidation) and Kiwi Installs.

[4] Ms Jones says that she was short paid her wages over several weeks by Install Por. Further that she was not reimbursed for expenses and other money she was owed during her period of employment. Ms Jones seeks reimbursement of the sum of \$9,160.35. The sum shown in a final pay slip prepared by Mr Bhosale for the period 7 - 13 August 2023 for payment on 16 August 2023 is \$9,460.35. Ms Jones confirmed that she has only been paid \$300 of that amount and is owed \$9,160.35 net. Ms Jones seeks interest on the amount outstanding together with reimbursement of the filing fee.

The Authority's investigation

[5] The Authority is satisfied that Install Pro has been served with the statement of problem. A perusal of the administration file shows that on 1 March 2024 Mr Bhosale sent an email to the Authority Officer confirming he had received the statement of problem and attachments and a cover letter advising about the process and a template for a statement in reply.

[6] No statement in reply was lodged within the required timeframe on behalf of Install Pro. A case management conference was set down with the Authority for 3pm on 23 May 2024. Both Ms Jones and Mr Bhosale confirmed they were able to attend on that day at that time.

[7] Mr Bhosale could not be reached by telephone. A message was left. He did not contact the Authority to join the case management conference. The conference proceeded with Ms Jones in attendance.

[8] A notice of direction dated 23 May 2024 set a timetable for an exchange of statements of evidence for Ms Jones and Install Pro. Install Pro was directed to provide wage and time and holiday and leave records within 20 days of 23 May 2024. The administration file confirms that the notice of direction and notice of investigation meeting was served.

[9] There was then follow up by the Authority Officer with Mr Bhosale because Install Pro had not provided the records. Install Pro had not lodged and served

statements of evidence as required by 12 September 2024. The Authority did not receive a response.

[10] During the week of the investigation meeting Mr Bhosale sent an email to the Authority Officer confirming that he would attend at the investigation meeting.

[11] The Authority delayed the investigation meeting for about ten minutes in case Mr Bhosale was running late. Mr Bhosale failed to attend and provided no good reason as to why he could not attend. In the absence of a good reason as to his non-attendance the Authority proceeded to hear evidence from Ms Jones and about her claim.

The Issues

[12] The Authority needs to determine the following issues:

- (a) Was Ms Jones employed by Install Pro?
- (b) If there was an employment relationship are amounts due and owing to Ms Jones by Install Pro?
- (c) Should there be an award of interest on any amounts found owing?
- (d) Should there be reimbursement of the filing fee?

Was the relationship with Install Pro in the nature of employment?

[13] Ms Jones said she was employed by Install Pro. There was no written agreement entered into between the parties but there are indications that both parties intended the relationship to be one of employment. The payslips issued to Ms Jones by Install Pro refer to “employment details” at the top. PAYE was shown as deducted on the payslips but a record of earnings for the material period from Inland Revenue (IR) raises an issue whether, to the extent that wages were paid, PAYE deducted was paid to IR. Payments to Ms Jones are shown in her bank account as weekly wages from both Install Pro and Kiwi Installs.

[14] Ms Jones payslips from Install Pro refer to ordinary pay and at the bottom to annual leave, alternative holidays and sick leave. One payslip refers to bereavement leave and a public holiday. The final payslip included an amount for holiday pay. Ms Jones said in her evidence that she had been advised that accrued holiday leave would

be transferred from Kiwi Install to Install Pro and is not clear whether this was taken into account when calculating the holiday pay.

[15] The way the work was undertaken does not support the real nature of the relationship was other than the employment relationship the parties intended. The Facebook group messages sent at the time of employment reflect a measure of supervision and control about the work performed.

[16] The evidence supported for the short period Ms Jones worked for Install Pro the relationship was one of employment.

[17] The Authority has jurisdiction to consider Ms Jones claim for reimbursement of money.

Are there amounts due and owing to Ms Jones?

[18] Ms Jones said that there had been ongoing underpayment of her wages by Install Pro and she approached Mr Bhosale regularly about this. Promises were made for payment but were not kept.

[19] At the time the final pay was to be calculated Ms Jones showed Mr Bhosale her calculation of what was still owing for wages. Mr Bhosale agreed this was accurate and included that figure on the final pay slip. There is also an amount for holiday pay and other sums under reimbursements in the final payslip.

[20] Ms Jones did not think that the holiday pay figure in the final pay slip was correct as she understood that accrued annual leave was to be transferred from Kiwi Installs to Install Pro. She was given some time to see if there was anything to support this. The Authority has not received any further information about this. The Authority has proceeded to determine the matter. It is likely that Install Pro may soon be removed from the company register as the objection period for removal has lapsed.

[21] The total amount owing to Ms Jones on her final pay slip is \$9,460.35. The evidence supports the sum of \$300 has been paid leaving a balance of \$9,160.35 net due and owing.

[22] The Authority is satisfied that the sum of \$9,160.35 remains unpaid.

[23] Ms Jones is entitled to reimbursement of the sum of \$9,160.35 net.

Should there be an award of interest?

[24] The Authority has the power to award interest in schedule 2 of the Act. The Authority is satisfied that it should order inclusion of interest in the amount of \$9,160.35.

[25] The Authority calculates interest in accordance with Schedule 2 of the Interest on Money Claims Act 2016.

[26] Ms Jones last day of work was 18 August 2023. It is appropriate to calculate interest from that date until the determination of the Authority.

[27] Ms Jones is entitled to an interest payment of \$628.60.

Should there be reimbursement of the filing fee?

[28] Ms Jones was not represented and confirmed she did not incur any legal costs and expenses.

[29] Ms Jones did incur a filing fee of \$71.55 when she lodged her statement of problem and is entitled to be reimbursed that amount.

Orders

[30] Install Pro Limited is ordered to pay to Jordyn Jones the following amounts:

- (a) The sum of \$9,160.35 net being the amount outstanding for her final pay.
- (b) The sum of \$628.60 being interest.
- (c) The sum of \$71.55 being reimbursement of the filing fee.

Helen Doyle
Member of the Employment Relations Authority