

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 22/09
5128226

BETWEEN

JAMES JOSEPH
Applicant

AND

PRAKASH SHARMA AND
SANTOSHI MAA
ENTERPRISES LIMITED
Respondent

Member of Authority: P R Stapp

Representatives: Graeme Ogilvie for Applicant
Respondent failed to attend or be represented

Investigation Meeting: 3 March 2009 at Wellington

Determination: 3 March 2009

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] James Joseph is seeking the payment of wages and holiday pay from Prakash Sharma. Ms Sharma has accepted that a sum is owed but disputed the sum claimed by Mr Joseph.

[2] Ms Sharma did not attend the investigation meeting. She was contacted by telephone and said she had forgotten and was too busy to attend. There was no good cause for the respondents not attending the Authority's investigation meeting. I proceeded under clause 12 Schedule 2 of the Employment Relations Act fully in the matter as if the parties had attended or been represented.

Issues

[3] Who owes Mr Joseph the sum he has claimed, and how much is owed?

The facts

[4] Mr Joseph commenced working on 18 October 2002 at Santoshi Lotus Indian restaurant owned by Ms Sharma. He signed off an employment agreement with Santoshi Maa Enterprises Limited. It was agreed he would work 6 days per week and be paid \$450 nett per week. Ms Sharma was the sole director of the company. It is no longer trading. During the time of his employment Mr Joseph says he was not always paid his wages, holiday pay, statutory holiday pay and extra days he worked to cover for absences. He says that some payments made by Ms Sharma were to reimburse him for purchases he made for her use while he was in India. He produced an invoice and bank statements.

[5] Mr Joseph's representative analysed bank statements produced by Mr Joseph and the company's bank statements filed in the Authority by Ms Sharma. Mr Joseph's representative matched payments from the bank accounts and deducted from the claim the amounts Mr Joseph could not provide a bank statement to support. Mr Joseph accepted that he did go to India for about 14 days in 2003 and nine months in 2004. Mr Joseph's representative calculated the arrears of wages as \$3,250. No wages and time record has been produced by the respondents when requested.

[6] Mr Joseph has claimed \$2,975 for public holidays he said he worked. His claim is based on working 26 statutory holidays during his time at the restaurant. The calculation is based on the rate of \$75 per day at time and one half for full days worked. Mr Joseph could not recall the dates and actual hours worked. He said that the restaurant was closed on Christmas Day but was open every other statutory holiday. He said he gave the written details of the dates and time he worked to Ms Sharma. His evidence was not contradicted and no wages and time record produced by Ms Sharma: I accept the claim from Mr Joseph.

[7] Mr Joseph has also claimed wages owed for times he worked extra days when there were staff shortages. He has claimed \$3,900. Mr Joseph said he worked an extra day per week over twenty three weeks from 28 October 2002 until 7 April 2003 and covered for other staff when they were away at other times. I accept his claim.

[8] He also claimed \$4,725 for 10.5 weeks annual holidays not taken for the years ended 2003, 2004, 2005 and 2006. However, he reduced his claim by three weeks because he acknowledged he travelled to India in 2003 and 2004. He amended his claim to 7 round weeks holidays not paid: \$3,150. No wages and time records have been produced to contradict Mr Joseph's claim of unpaid holidays not taken by him during his employment. His claim should be amended by a further 14 days for his trip to India in 2003 that was more likely to also have been a holiday, I hold. He is owed 5 weeks annual leave not paid: \$2,250.

Determination

[9] Mr Joseph's employer, Santoshi Maa Enterprises Limited, owes him \$3,250 wages in arrears, \$2,975 for work on public holidays, \$2,250 annual leave and \$3,900 wages for extra work. Santoshi Enterprises Limited is no longer trading. Mr Joseph still wants an order on the amount he is owed by Santoshi Maa Enterprises Limited.

Orders of the Authority

[10] Santoshi Maa Enterprises Limited is ordered to pay Mr James Joseph the following sums:

- \$3,250 wages in arrears,
- \$2,975 for work on public holidays,
- \$2,250 annual leave, and
- \$3,900 wages for extra work.

[11] Costs follow the event. It is in order for Santoshi Maa Enterprises Limited to pay Mr James Joseph the sum claimed of \$1,000 contribution for costs and \$70 filing fee.

P R Stapp
Member of the Employment Relations Authority