

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2023] NZERA 617  
3214419

BETWEEN

FREYANA KAIKOBADI  
Applicant

LARR LIMITED  
Respondent

Member of Authority: Marija Urlich

Representatives: Ms Kaikobadi, in person  
No appearance for the Respondent

Investigation Meeting: 20 October 2023

Determination: 20 October 2023

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] From August 2021 to September 2022 Ms Kaikobadi worked for Larr Limited in a business development role providing online marketing services. When her employment ended on 8 September, she was not paid termination holiday pay or final wages and commission. These sums remain outstanding. Ms Kaikobadi seeks orders for payment of these arrears, interest and reimbursement of the filing fee incurred in lodging this application. She also seeks a sum of compensation for the distress caused and resources expended in pursuing her arrears claim.

[2] Larr Ltd has not filed a statement in reply, filed relevant documents as directed or otherwise participated in the Authority process.

## **The Authority's investigation**

[3] On 20 July 2023, Ms Kaikobadi's statement of problem was emailed to the director of Larr Limited, Mr Kankanamge at the email address with which he had earlier corresponded with the Authority on this matter. It was also served at 8.52am that day by a process server on the address for service of Larr Ltd as recorded in the companies register.

[4] By direction dated 10 August the Authority identified the issues to be investigated and determined and proposed timetabling directions including that an investigation meeting be held today. The parties were invited to file any objection to the proposal by 7 September. The direction also required Larr Ltd to file documents related to Ms Kaikobadi's employment including her employment agreement, wages and time records, holiday and leave records, payslips and final pay details. The direction stated Larr Ltd would require leave to file a statement in reply. The direction was served on Larr Ltd by email and to its address for service.

[5] By direction dated 8 September the proposed timetabling directions were confirmed. The notice of investigation was emailed to the parties and served on the address for service of Larr Ltd.

[6] At the investigation meeting today there was no appearance on behalf of Larr Ltd. The meeting commenced 15 minutes after the scheduled start time to accommodate lateness. I am satisfied Larr Ltd has had a fair opportunity to participate in the investigation of Ms Kaikobadi's claim including that it has been served with her statement of problem, the Authority directions and the notice of today's investigation meeting. By leave of the Authority Ms Kaikobadi attended the investigation by audio-visual link. For completeness, the parties have tried to resolve this employment relationship problem themselves at mediation.

[7] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

## **Issues**

[8] The issues identified for investigation and determination are:

- a) does Larr Ltd owe wage arrears to Ms Kaikobadi of:
  - (i) 3 weeks' pay;
  - (ii) final holiday pay; and
  - (iii) commission of \$1250 (gross)?
- b) if so, should an award of interest be ordered?
- c) can Ms Kaikobadi be compensated for additional losses suffered consequent to Larr Limited's actions?
- d) should either party contribute to the costs of representation of the other party?

## **Relevant law**

[9] Where there has been a default in payment to an employee of wages an employee may bring a claim for recovery of arrears: s 131 of the Act

[10] Where an employee's employment has come to an end before annual leave has been taken an employer is obliged to pay annual holiday pay in the final pay: s 27 of the Holidays Act 2003.

[11] Ms Kaikobadi has not sought penalties against Larr Ltd for breaches of statutory duties alleged and the Authority is unable to impose a penalty of its own motion for such matters. If she had done so Larr Ltd may have been vulnerable to a penalty for failing to comply with the statutory obligations it owed Ms Kaikobadi. As advised to Ms Kaikobadi at the investigation meeting the Authority is unable to make an award of compensation as sought on the claim before it.

## **Discussion**

[12] Ms Kaikobadi has provided a detailed account of the steps taken to raise and pursue her arrears claim with Larr Ltd, including meeting with Mr Kankanamge, telephoning, emailing and messaging him. On the information before the Authority Larr Ltd has accepted the arrears claimed are owed and has raised no challenge to the claimed sums.

### *Arrears of 3 weeks wages*

[13] The Authority is satisfied Larr Ltd owes Ms Kaikobadi three weeks wage arrears for the weeks ending 26 August, 1 and 8 September 2022. On 15 August Ms Kaikobadi gave one month's notice under the terms of the parties' employment agreement. She was paid for one of the three weeks she worked and one week's wages is owed as the balance of her notice period which she was not required to work.

[14] Ms Kaikobadi is entitled to be paid by Larr Ltd for these three weeks at the agreed rate of pay, which was \$25 per hour, at the agreed weekly hours of 32 per week. Larr Ltd is ordered to pay Ms Kaikobadi wage arrears totalling \$2,400.00 (gross) within 14 days of the date of this determination.

### *Commission*

[15] Ms Kaikobadi has provided detailed information about the commission payments claimed which is accepted.

[16] Larr Ltd is ordered to pay Ms Kaikobadi \$1,250.00 (gross) in unpaid commissions within 14 days of the date of this determination.

### *Holiday pay*

[17] As an employee Ms Kaikobadi was entitled to the calculation and payment of outstanding holiday pay when her employment ended.<sup>1</sup> This did not occur. Larr Ltd has not provided the wage, time and holiday pay records as directed so there is no information before the Authority as to what holiday pay Ms Kaikobadi received during her employment or what was owed when her employment ended. She says she was not paid any holiday pay during or when her employment ended and did not agree to take leave paid as holiday pay during her employment. In the absence of Larr Ltd providing

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<sup>1</sup> s 27 Holidays Act 2003.

the records it was required to and based on the information Ms Kaikobadi has provided her claim is accepted.

[18] In addition, Ms Kaikobadi is entitled to be paid holiday pay for the three weeks arrears calculated at eight per cent of the gross total.

[19] Larr Ltd is ordered to pay Ms Kaikobadi \$3,072.00 in holiday pay entitlements within 14 days of the date of this determination.<sup>2</sup>

### *Interest*

[20] Ms Kaikobadi is entitled to an award of interest on the total arrears claimed including the holiday pay component. The Authority has the power to award interest under clause 11 of the Second Schedule of the Act. Interest is to reimburse someone for the loss of use of monies to which there is an established entitlement.

[21] It is appropriate where a person has been deprived of the use of money to make an award for interest.

[22] Larr Ltd is ordered to pay interest, using the civil debt interest calculator, within 14 days of this determination, as follows:<sup>3</sup>

- (i) Interest on the sum of \$6,722.00 from 8 September 2022 until the date payment is made in full.

[23] Interest is payable in accordance with Schedule 2 of the Interest on Money Claims Act 2016.

### *Filing fee*

[24] The filing fee of \$71.55 is an amount Ms Kaikobadi can reasonably recover from Larr Ltd. Larr Ltd is to pay the sum of \$71.55 to Ms Kaikobadi within 14 days of the date of this determination.

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<sup>2</sup> 8% of total gross earnings based on Ms Kaikobadi's IRD summary of earnings for relevant period + 3 weeks wage arrears.

<sup>3</sup> [www.justice.govt.nz/fines/civil-debt-interest-calculator](http://www.justice.govt.nz/fines/civil-debt-interest-calculator)

## Summary of orders

[25] The Authority orders as follows:

(a) Within 14 days of the date of determination Larr Limited is ordered to pay Frayana Kaikobadi the following sums:

- (i) wage arrears of \$2,400.00;
- (ii) commission arrears of \$1,250.00;
- (iii) holiday pay of \$3,072.00; and
- (iv) filing fee of \$71.55.

b) Within 14 days of the date of determination Larr Limited is to calculate and pay Ms Kaikobadi interest on total arrears of \$6,722.00 as awarded in paragraph [22] above.

Marija Urlich  
Member of the Employment Relations Authority