

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 729
3323202

BETWEEN THILINI SULAKSHANA
WICKRAMANAYAKE
KARUNARATHNE
Applicant

AND CREATING REAL VALUE
LIMITED
Respondent

Member of Authority: Marija Urlich

Representatives: Applicant, by audio-visual link
Botau Retire, Respondent director

Investigation Meeting: 6 December 2024, at Auckland

Determination: 9 December 2024

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Ms Karunarathne worked for Creating Real Value Limited (CRL) as a business administrator from 18 September 2023 until her employment ended on 31 March 2024. She seeks wage arrears of \$1,630.42 (gross) in unpaid wages, interest and reimbursement of the Authority filing fee of \$71.55. She also seeks an order for \$3,000 which she paid to CRV. At the investigation meeting she confirmed she makes no claim arising from the circumstances of her employment ending or for payment of holiday pay.

The Authority's investigation

[2] Ms Karunaratne lodged her application on 16 September 2024. On 17 September the statement of problem was delivered by courier post on the registered office of CRV. On 1 October, at the request of Mr Retire, CRV's director, the statement of problem was reserved by courier post at its registered office. CRV did not lodge a statement in reply or further engage with the Authority.

[3] On 11 November 2024 Authority directions were served on the parties. The directions identified the issues to be investigated and determined, set an investigation meeting date and directed CRV to file Ms Karunaratne's wage, time and leave records. Ms Karunaratne, who no longer lives in New Zealand was granted leave to attend the investigation meeting by audio-visual link.

[4] At the investigation meeting the Authority received evidence from Ms Karunaratne and Mr Retire. CRV was granted leave to participate in the investigation though it has not lodged a statement in reply or filed the information as directed. 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

[5] The issues for investigation and determination are whether:

- (i) the wage arrears and \$3,000 are due and owing to Ms Karunaratne from CRV;
- (ii) the Authority should exercise its discretion and order interest calculated and paid on any ordered wage arrears or other monies ordered; and
- (iii) is Ms Karunaratne entitled to be reimbursed the filing fee of \$71.55.

The parties' employment agreement

[6] Ms Karunaratne and CRV entered a written employment agreement (the employment agreement) on 12 September 2023.¹ She received a work visa which allowed her to only work for CRV. The employment agreement provides Ms Karunaratne would:

- (i) work 15 hours per week between 9.30am and 2.30pm Monday to Friday;
- (ii) be paid \$25 per hour; and
- (iii) be paid fortnightly into a New Zealand bank account of her nomination.

Relevant law

[7] 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.

[8] No premium is to be charged for employment: s 12A Wages Protection Act 1983.

Discussion

Arrears of wages

[9] In support of her claim Ms Karunaratne provided a document Mr Retire confirmed he created which records at 24 July 2024, the date she left New Zealand, CRV owed her \$1,630.42 (gross) in wage arrears. They agree this is the sum of wages outstanding and I am satisfied having considered the evidence and reviewed the supporting information this is the case.

[10] CRV is ordered to pay Ms Karunaratne wage arrears totalling \$1,630.42 (gross) because she is entitled to be paid at the agreed hourly rate of \$25 for every hour worked and these wage arrears remain unpaid.

¹ Mr Retire signed the employment agreement on behalf of CRV.

The \$3,000 payment

[11] Ms Karunaratne seeks reimbursement of \$3,000 which she described as an investment in CRV. In evidence she outlined the circumstances in which she made the payment to CRV – she and her husband met Mr Retire, they discussed investing in his business and in exchange Ms Karunaratne would be employed part-time by CRV. She also gave evidence the transaction details statement attached to her application to the Authority is of her bank account and that the sum of \$3,000 which that document shows as debited on 22 September 2023 and is marked “Investment” was paid into a bank account, as advised by Mr Retire, three days after she entered an employment agreement with CRV and had been issued a work visa to work for CRV. Mr Retire said the agreement reached with Ms Karunaratne and her husband was to employ her in exchange for the investment sum which CRV used towards paying Ms Karunaratne’s wages because the business was newly established.

[12] Section 12A of the Wages Protection Act 1983 provides no person or person engaged by the employer must seek or receive any premium in respect of the employment of any person, whether the premium is sought or received from the person employed or proposed to be employed or from any other person.

[13] I am satisfied the \$3,000 was paid by Ms Karunaratne to Mr Retire to secure a job with his business, CRV. That is a premium under s 12A and CRV must repay that sum to Ms Karunaratne.

Interest

[14] 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. Ms Karunaratne is entitled to an award of interest on the wages awarded calculated from the date she left New Zealand because this was the balance due at that date having received a payment of \$200 from CRV on or about 23 July.

[15] CRV is ordered to pay interest, using the civil debt interest calculator, within 28 days of this determination, as follows:²

- (i) Interest on the sum of \$1,630.42 (gross) from 23 July 2024 until the date payment is made in full.

Filing fee

[16] The filing fee of \$71.55 is an amount Ms Karunaratne can reasonably recover from CRV. CRV is to pay the sum of \$71.56 to Ms Karunaratne within 28 days of the date of this determination.

Payment by instalments

[17] At the investigation meeting Mr Retire asked if the Authority would order payment of any awarded sum by instalment. He provided information which supports this request including a recent statement from CRV's bank account and a cash flow forecast which lists CRV's expenses. Mr Retire could not say what rate of instalment CRV could afford. Ms Karunaratne opposes an order for instalment – she says she has waited for months for her wages and other monies due to her, being unpaid caused her hardship and she has had to use her resources to chase her entitlements.

[18] Sections 123(2), 131(1A) and 135(4A) of the Act provides the Authority may order remedies awarded to settle a personal grievance, arrears and penalties are paid by instalment to the employee if the employer's financial position so requires.

[19] There are two issues for consideration – first whether the financial position of CRV requires an order for instalment, the second, whether an order should be made that the awards made in favour of Ms Karunaratne should be paid by instalment.

[20] The information before the Authority indicates CRV is not in a strong financial position and it is accepted the financial position of CRV may warrant an order for instalment payments. However, CRV was unable at the investigation meeting to say

² www.justice.govt.nz/fines/civil-debt-interest-calculator

how much it could afford. Having considered all the relevant factors, including that there is uncertainty as to what CRV could afford to pay by instalment, I am not persuaded the instalment payment order sought from the Authority is justified. The parties may be able to reach such an agreement themselves.

Summary of orders

[21] Within 28 days of the date of determination Creating Real Value Limited is ordered to pay Thilini Sulakshsna Wickramanayke Karunarathne the following sums:

- (i) wage arrears of \$1,630.42;
- (ii) premium recovery sum of \$3,000; and
- (iii) filing fee of \$71.55

[22] Within 28 days of the date of determination Creating Real Value Limited is to calculate and pay Thilini Sulakshsna Wickramanayke Karunarathne interest on wage arrears in paragraph [15] above.

Marija Urlich
Member of the Employment Relations Authority