



New Zealand Employment Relations Authority Decisions

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Katavich v Ateya Construction Limited (Auckland) [2018] NZERA 377; [2018] NZERA Auckland 377 (28 November 2018)

Last Updated: 4 December 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND		
		[2018] NZERA Auckland 377
		3036071
	BETWEEN	BRIAN KATAVICH Applicant
	AND	ATEYA CONSTRUCTION LIMITED Respondent
Member of Authority:	Eleanor Robinson	
Representatives:	Applicant in person	
Edna Leone, representing/no appearance for the Respondent		
Investigation Meeting:	28 November 2018 at Auckland	
Date of oral determination	28 November 2018	
Date of written determination:	28 November 2018	
DETERMINATION OF THE AUTHORITY		

Employment Relationship Problem

[1] The Applicant, Mr Brian Katavich, claims that he was employed by the Respondent, Ateya Construction Limited (Ateya), during the period 26 November 2017 to 12 March 2018, and he is owed unpaid wages for the period and holiday entitlement.

[2] Ms Edna Leone, sole Director and Shareholder of Ateya, denies that Mr Katavich is owed any monies by Ateya.

Issues

[3] The issues for determination are whether or not Mr Katavich is owed:

- unpaid wages
- unpaid holiday entitlement

Note

[4] Ateya failed to follow directions of the Authority. No Statement in Reply was filed despite the request to Ms Edna Leone, sole director and shareholder of Ateya. Nor did Ateya provide any of the documentation requested by the Authority.

[5] The Investigation Meeting was set down to be held on 28 November 2018 as agreed with the parties in a case management conference on 24 October 2018.

[6] The date was confirmed to the parties by means of a Notice of Investigation Meeting dated 24 October 2018.

[7] Ms Leone did not attend the Investigation Meeting in person and an Authority Officer was unable to contact Ms Leone by telephone on the day of the meeting.

[8] I was satisfied that no good cause had been shown for Ms Leone's failure to attend and I consequently proceeded with the Investigation Meeting pursuant to clause 12 of Schedule 2 of the Employment Relations Act 2017.

Background

[9] Mr Katavich had commenced employment at Ateya following his involvement on a course organised by WINZ. Ms Leone had attended the course and invited him to start work at Ateya. Initially he was reimbursed by WINZ but then became employed by Ateya with effect from 26 November 2017.

[10] Mr Katavich was provided with an individual employment agreement (the Employment Agreement) after he had requested it on several occasions.

[11] The copy of the Employment Agreement, which has not been signed, provides the following clauses:

- Name of Employer: Edna Leone, Ateya Construction Limited
- Name of Employee: Brian Katavich
- cl 2.2 Date of Commencement: 24th October 2017
- cl 3.1 Position and Title: Carpenter
- cl 7 Hours of Work: Mon – Thurs 7.30 to 5.00
- cl 9 Remuneration: \$18.00 per hour
- cl 9.2 Authorised overtime: \$35.00 per hour
- cl 20.2 Termination of employment 4 weeks (employer & employee)

[12] Mr Katavich said that the Employment Agreement had been revised subsequently and he had signed the amended version, however Ms Leone had not provided him with a copy.

[13] The changes he recalled being in the amended employment agreement included the job title change from Carpenter to Tradesman and the commencement date change.

[14] Mr Katavich said that during his employment he experienced periods when work was not made available to him. As a result he decided to resign from his employment. He had discussed the notice period with Ms Leone and she had told him two weeks would be acceptable.

[15] Mr Katavich's last day of employment with Ateya was 12 March 2018.

Is Mr Katavich owed unpaid wages by Ateya?

[16] Mr Katavich said that he worked hours in excess of the 20 hours set out in the Employment Agreement.

[17] The payslips and bank statements provided by Mr Katavich confirm an established average working work over the period he worked at Ateya of 30 hours per week, an average of 6 hours per day.

Non-payment of full entitlement on statutory holidays

[18] Mr Katavich said he had not worked on Christmas Day or Boxing Day, Monday 25 and Tuesday 26 December

2017, New Year's Day or the Day after New Year's Day, Monday 1 and Tuesday 2 January 2018.

[19] A normal working day based on a pattern of working on those days would have been 6 hours equating to a gross payment of \$432.00 (calculated as 6 hrs x 4 days x \$18.00 per hour).

[20] Mr Katavich said that he had received a payment of \$210.00 net in respect of the four public holidays.

[21] I determine that Mr Katavich is owed a gross payment of \$432.00 by Ateya, from which is to be deducted the net payment of \$210.00 which he has been paid.

Unpaid wages 15 – 18 January 2018

[22] Mr Katavich said he had been paid only \$30 net per day for the four days 15 to 18 January 2018 due to an unavailability of work on those days. This had been confirmed in a text message sent by Ms Leone.

[23] I determine that Mr Katavich is owed a gross payment of \$432.00 by Ateya, from which is to be deducted the net payment of \$120.00 which he has been paid.

Unpaid wages 5 – 19 February 2018

[24] Mr Katavich said he had been informed by text message from Ms Leone on 5 February 2018 that there would be no work available for him until 19 February 2018.

[25] I determine that Mr Katavich is owed a gross payment of \$1,080.00 gross (calculated as \$18.00 x 30 hours per week x 2 weeks) by Ateya.

Unpaid wages 12 March 2018

[26] Mr Katavich said he had worked on 12 March 2018 but had received no payment for that day. This evidence is supported by the text message exchanged between him and Ms Leone on 14 March 2018.

[27] I determine that Mr Katavich is owed a gross payment of \$108.00 by Ateya.

Is Mr Katavich owed pay in respect of annual holiday entitlement?

[28] [Section 16](#) of the [Holidays Act 2003](#) (HA) applies to employees who have completed 12 months continuous employment. Mr Katavich had not completed 12 months continuous service at the termination of his employment on 12 March 2018. Employees who have not completed 12 months continuous employment are covered by [s 23](#) of the HA which mandates that the employer must pay the employees holiday pay at the rate of 8% of the employee's gross earnings.

[29] Mr Katavich did not receive payment in respect of annual leave entitlement accrued but not taken during the period 26 November 2017 to 12 March 2018.

[30] I determine that Mr Katavich is owed monies in respect of holiday pay earned but not taken during the period of his employment with Ateya.

[31] Ateya is ordered to pay Mr Katavich the sum of \$648.00 gross as holiday pay (calculated as \$540.00 per week x 15 weeks x 8%) pursuant to [s 23](#) of the HA.

Summary of orders

[32] I order that Ateya pay Mr Katavich the following amounts:

- a gross payment of \$432.00 in respect of a shortfall of payment for public holidays, from which is to be deducted the net payment of \$210.00
- a gross payment of \$432.00 in respect of a shortfall in payment 15 – 18 January 2018, from which is to be deducted the net payment of \$120.00 which he has been paid.
- owed a gross payment of \$1,080.00 gross in respect of the two weeks commencing 5 and 19 February 2018
- a gross payment of \$108.00 in respect of one day worked and not paid on 12 March 2018
- the sum of \$648.00 gross as holiday pay (calculated as \$540.00 per week x 15 weeks x 8%) pursuant to [s 23](#) of the HA

Filing Fee

[33] Mr Katavich is to be reimbursed the filing fee of \$71.56 by Ateya.

Costs

[34] I note here that Mr Katavich represented himself so there is no order as to costs.

Eleanor Robinson

Member of the Employment Relations Authority

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