

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2018] NZERA Christchurch 117

3027072

BETWEEN AMIT KUMAR
Applicant

AND ARIYAN AUTO LIMITED
Respondent

Member of Authority: Peter van Keulen

Representatives: Applicant in person
Krishnal Ariyan, representative for Respondent

Investigation Meeting: 22 August 2018

Date of Determination: 22 August 2018

Member of Authority: Peter van Keulen

DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY

Wage arrears claim

[1] Ariyan Auto Limited employed Amit Kumar from 22 February 2017 until 2 January 2018. During the course of his employment, Ariyan did not pay Mr Kumar all of his wages and holiday pay. Mr Kumar has made an application for payment of arrears of wages and holiday pay. I will consider this application pursuant to s 131 of the Employment Relations Act 2000 (the Act).

Events giving rise to the wage arrears claim

[2] Ariyan Auto paid Mr Kumar \$25.00 per hour and he worked 40 hours per week i.e. he was paid \$1,000.00 gross per week.

[3] Ariyan Auto failed to pay Mr Kumar his weekly pay on 3 November 2017, 10 November 2017, 17 November 2017 and 1 December 2017.

[4] Mr Kumar took annual leave from 23 December 2017. Ariyan did not pay Mr Kumar any holiday pay during this leave nor did it pay him for the public holidays over the Christmas period.

[5] There were ongoing discussions (by messenger) between Mr Kumar and Krishnal Ariyan, the director and shareholder of Ariyan Auto, over the Christmas period. Mr Ariyan acknowledged that Ariyan Auto owed wages to Mr Kumar and told him it would sort the payments out in February 2018.

[6] This was not acceptable to Mr Kumar and he did not return to work. Given the exchanges over messenger that I have seen I will treat 2 January 2018 as Mr Kumar's last day of work, noting that he was however on leave from 23 December 2017 until 2 January 2018.

Discussion

[7] In the investigation meeting, Ariyan Auto accepted that Mr Kumar was owed four weeks wages. It also accepted that it had not paid Mr Kumar holiday pay, either any accrued holiday pay at the termination of Mr Kumar's employment or holiday pay for public holidays over the Christmas and New Year period of 2017/2018.

[8] Ariyan Auto asserted that despite this it did not owe Mr Kumar the amount he claimed. It said it had lost money because of his poor workmanship and his failure to come back to work in January 2018. It was unable to quantify any alleged loss or provide any evidence to support its claims.

[9] I am satisfied that there is no valid claim by Ariyan Auto against Mr Kumar for faulty workmanship or a failure to return to work in January 2018.

[10] I am also satisfied that Mr Kumar's account of what Ariyan Auto owes him is correct.

[11] As a result, I conclude that Ariyan Auto owes Mr Kumar the following amounts:

- a. Four weeks unpaid wages being \$4,000.00 gross;
- b. Four public holidays over the Christmas and New Year period of 2017/2018 being \$800.00 gross;
- c. Holiday pay calculated at 8% of total earnings as at 2 January 2018 being \$3,584.00 gross¹;

[12] On this basis, Mr Kumar is owed a total for arrears of holiday pay and wages of \$8,384.00 gross.

Determination

[13] I order Ariyan Auto to pay wage arrears to Mr Kumar of \$8,384.00 gross within 14 days of the date of this determination.

¹ Mr Kumar worked 44 weeks so he should have been paid \$44,000.00 gross plus \$800.00 for the statutory holidays. 8% of \$44,800.00 is \$3,584.00.

Costs

[14] Mr Kumar is entitled to the filing fee on the statement of problem, which he has lodged with the Authority. I order that Ariyan Auto pay Mr Kumar the sum of \$71.56 within 14 days of the date of this determination.

Peter van Keulen
Member of the Employment Relations Authority