

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2013] NZERA Christchurch 26
5401210

BETWEEN	WONG HOI LING First Applicant
A N D	FAM KIAN ON Second Applicant
A N D	AHV CONTRACTING LIMITED Respondent

Member of Authority:	M B Loftus
Representatives:	Wong Hoi Ling and Fam Kian On, on their own behalf No appearance for the Respondent
Investigation Meeting:	29 January 2013 at Blenheim
Submissions Received:	At the investigation
Date of Determination:	1 February 2013

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicants, Ms Wong and Mr Fam, each seek to recover \$100 they say was improperly deducted from their wages.

[2] The respondent, AHV Contracting Limited (AHV), denies the claim (refer statement in reply).

Non appearance on behalf of the respondent

[3] AHV was not represented at the investigation meeting.

[4] I am satisfied it was aware of the investigation. Blair Fitzsimons, an officer of AHV, participated in a telephone conference to discuss administrative issues. It

included agreement on a date for the investigation meeting (29 January 2013). There is also evidence the notice of hearing was delivered by both e-mail and courier.

[5] Given the absence was neither notified nor explained, I know of no reason why I should not proceed. I chose to do so.

Background

[6] AHV engages labour it then deploys to fulfil various contracts for agricultural clients. Ms Wong and Mr Fam were engaged as *mixed horticultural workers* on *Fixed Term Casual Employment Agreements* to perform tasks on vineyards and orchards in Marlborough.

[7] Toward the end of their engagement, and having announced their intention to depart, Ms Wong and Mr Fam each had \$100 deducted from their pay. AHV claims this was payment for tools the company had *sold* the pair – secateurs and a picking bucket each.

[8] Ms Wong and Mr Fam were surprised by AHV's claim. They say they provided their own secateurs and when offered ones by AHV they declined immediately. They say the picking basket was on loan and payment would only be required if it were not returned. It was.

[9] AHV's response, as enunciated in the statement in reply, is:

Tools are purchased not loaned & no refunds are given or offered it is not economically viable to do so.

No agreement made for refund – why would after staff used tools AHV fully refund purchase price. This does not happen.

Determination

[10] I conclude the money was deducted. That is confirmed by both the statement in reply and wage slips provided by the applicants. The question is whether or not AHV can justify the deduction.

[11] Section 5 of the Wages Protection Act 1983 requires deductions be authorised by the employee from whose wages the money is being taken.

[12] Contained in each of the applicants' employment agreements is a clause entitled *Deductions Authorised*. It reads:

You hereby authorise us to deduct the weekly costs of accommodation and transportation as provided in clause 15 hereof directly from your weekly wages when such services are provided to you. You may withdraw your consent to these deductions being made directly from your wages at any time by notifying us in writing.

[13] Secateurs and a picking basket cannot be considered either accommodation or transport. The clause does not, therefore, appear to authorise this deduction.

[14] Notwithstanding that there is a second, inconsistent, provision entitled *Schedule B – Authorised Deductions*. It again covers accommodation and transport but adds two additional items. They are inadequate notice and employer's property. Under the heading *Employer's Property* four items are listed. They are secateurs, loppers, picking buckets and safety glasses. For each there is an alleged replacement cost and a *Deduction if not returned*. The deduction if not returned is \$20 for secateurs and \$80 for picking buckets. Those were, in this instance, the items said to be involved and the sums deducted.

[15] The existence of a provision that facilitates payment where an employee fails to return a tool provided by the employer belies AHV's assertion such practice does not happen. When I add the applicants' evidence they were told the tools were lent (which I accept), that they should be retained (which they were) and an inability to deduct for this purpose under the deductions clause, I conclude AHV cannot justify the deduction.

Costs

[16] Ms Wong and Mr Fam have been successful with their claim. They are therefore entitled to a contribution towards the costs incurred in pursuing it.

[17] Their costs come in two parts. The filing fee of \$71.56 and travelling costs. The filing fee is, I conclude, a given.

[18] The travelling costs arise as Ms Wong and Mr Fam now reside in Christchurch. They were required to travel to the investigation meeting and did so in their car. According to the Automobile Association, this is a round trip of some of 620km. Inland Revenue recognises 77 cents per kilometre as being an appropriate

rate for reimbursing the use of a private car. Applying that rate to the distance travelled, gives a reimbursement of \$477.40. I consider it appropriate the applicants be recompensed for this expenditure and add that amount to the filing fee.

Conclusion

[19] For the above reasons I conclude AHV cannot justify the deductions made from wages owing to the applicants. The following orders are therefore made:

- a. The respondent, AHV Contracting Limited, is to pay to the first applicant, Ms Wong, the sum of \$100 (one hundred dollars);
- b. AHV Contracting Limited must also pay the second applicant, Mr Fam, the sum of \$100 (one hundred dollars); and
- c. AHV Contracting Limited must pay the first applicant, Ms Wong, a further \$548.96 (five hundred and forty eight dollars and ninety six cents) as a contribution toward the costs she and Mr Fam incurred in pursuing this claim.

M B Loftus
Member of the Employment Relations Authority