

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2018] NZERA Auckland 18  
3015116

BETWEEN                      LISA LOVERIDGE  
   Applicant

AND                                MATIRA LIMITED  
   Respondent

3017271

BETWEEN                      MATIRA LIMITED  
   Applicant

AND                                LISA LOVERIDGE  
   Respondent

Member of Authority:        Vicki Campbell

Representatives:             Lisa Loveridge in person  
   Richard Kuegler for Matira Limited

Investigation Meeting:      30 November 2017

Determination:                17 January 2018

**DETERMINATION OF THE AUTHORITY**

- A.        Matira Limited is ordered to pay to Ms Loveridge the sum of \$6,647.34 as arrears of wages under section 131 of the Act within 28 days of the date of this determination.**
  
- B.        Matira Limited is ordered to pay to Ms Loveridge \$71.56 as reimbursement of the filing fee on her application.**
  
- C.        Matira Limited has failed to establish its claims for damages**

**against Ms Loveridge and its application is declined.**

### **Employment relationship problem**

[1] Matira Limited owned and operated a farm which was sold in June 2014. Prior to its sale Ms Lisa Loveridge worked on the farm as a Shepherd General undertaking general farm duties.

[2] During her employment Ms Loveridge undertook calving duties which were additional to her normal duties. In compensation for undertaking the calving duties Ms Loveridge and Mr Richard Kuegler, the managing director, agreed Ms Loveridge would be given time off in lieu for the hours spent on rearing the calves. Ms Loveridge says she did not receive all of the time off in lieu or payment for all of the overtime hours she worked and seeks payment calculated at the rate of \$25 per hour. Mr Kuegler denies any payment is owed to Ms Loveridge.

[3] Matira Limited has lodged a claim against Ms Loveridge for damages relating to alleged failures to account for hours worked, stock losses, failure to provide adequate notice and failure to account for company assets. Ms Loveridge denies the claims.

[4] Because the matters involve the same parties it was agreed I would investigate the claims made by both parties at the same time.

### **Issue**

[5] In order to resolve the employment relationship problems I must determine the following questions:

- a) Is Ms Loveridge owed arrears of wages and if so, how much?
- b) Should Matira's claim against Ms Loveridge succeed and if so should damages be awarded?

[6] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has not recorded all the evidence received from Ms Loveridge and Matira but has stated findings of fact, expressed conclusions on issues necessary to dispose of the matter and specified orders made as a result.

### **Arrears of wages**

[7] Ms Loveridge claims she is owed \$19,300 for time she says she worked as overtime. The determination of this matter has been made more difficult because the parties failed to enter into an employment agreement as required under the Act.

[8] I have reviewed all of the documents provided to me as part of these proceedings and have concluded there are two aspects to Ms Loveridge's claim.

[9] Ms Loveridge claims for overtime worked undertaking normal duties over a weekend and also for time off in lieu accrued but not taken at the time her employment ended for calf rearing. Ms Loveridge has calculated her claim on the basis of \$25 per hour for 8 hours worked on each of the 96.5 days.

[10] Mr Kuegler denies there was any agreement to pay an hourly rate of \$25 for overtime but accepted at the investigation meeting that he had agreed to provide Ms Loveridge with time off in lieu for the calf rearing duties which she undertook in addition to her normal duties.

[11] In support of her claim for \$25 per hour Ms Loveridge says she became aware of an agreement reached between Mr Kuegler and another farm worker where the other farm worker would be paid \$25 an hour for overtime hours worked.

[12] Ms Loveridge relies on that agreement to support her claim that she also should be paid \$25 per hour as compensation for the time off in lieu.

[13] Mr Kuegler acknowledged he had entered into an agreement with another employee to pay him \$25 per hour for overtime and I accept his evidence that it was for a specific task and the offer was not taken up.

[14] I have concluded that the arrangement between Ms Loveridge and Matira was for Ms Loveridge to be compensated for her additional hours for the calf rearing by accruing and taking time off in lieu on an hour-for-hour basis.

### *Time off in lieu*

[15] Ms Loveridge kept a diary note of the days she spent on calf rearing and provided these to Mr Kuegler at the end of each week. The documents Ms Loveridge provided to me show she did calf rearing in 2009 and 2010.

[16] Section 142 of the Act requires actions commenced in the Authority in relation to an employment relationship problem that is not a personal grievance to be commenced no more than six years after the date on which the cause of action arose.

[17] This means I must establish when the cause of action arose. The entitlement for time off in lieu with respect to the calf rearing arose in 2009 and 2010.

[18] Mr Kuegler says it was up to her supervisor, Mr Sam Karaka, (Ms Loveridge's partner) to manage the farm duties and hours of work. He says Ms Loveridge was free to take her time off in lieu at any time after she had accrued it.

[19] Mr Kuegler's evidence is not entirely accurate. Mr Karaka took instructions from Mr Kuegler about the tasks to be completed on the farm, on a regular basis. These instructions often included the duties Ms Loveridge was required to undertake.

[20] Ms Loveridge says she regularly raised the issue of when she would receive payment of her time off in lieu with Mr Kuegler. She told me Mr Kuegler never denied he owed her for the time off in lieu but simply told her he would sort it out.

[21] It was for Matira to ensure Ms Loveridge had a reasonable opportunity to take the accruing time off in lieu. If Mr Kuegler wished to avoid payment of the accrued balances he needed to ensure this was expressed in clear and unambiguous terms so that Ms Loveridge understood the consequences of the arrangement.

[22] In the absence of Ms Loveridge being given a reasonable opportunity to take the accruing time off in lieu I find the value of the untaken accumulated time off in lieu should have been paid out at the end of the employment relationship which was 27 June 2014.

[23] Ms Loveridge lodged her proceedings on 13 July 2017. The claim for the payment of accumulated time off in lieu was commenced within six years of the date the cause of action arose.

[24] Ms Loveridge is entitled to payment for the accumulated time off in lieu relating to the calf rearing. The time off in lieu is to be calculated at Ms Loveridge's ordinary rate of pay as at 30 June 2014. Based on her claim that she worked 33 days in 2009 and 24 days in 2010 Ms Loveridge's claim amounts to 57 days in total. Ms Loveridge's ordinary rate of pay on 30 June 2014 was a salary of \$30,320 per annum which equates to \$116.62 per day making a total of \$6,647.34.

[25] Matira Limited is ordered to pay to Ms Loveridge the sum of \$6,647.34 as arrears of wages under section 131 of the Act within 28 days of the date of this determination.

### ***Overtime***

[26] In the documents provided to the Authority Ms Loveridge has set out the dates she claims were worked as overtime. They are all weekend dates. The tasks undertaken on these overtime dates include general tasks such as feeding out and drafting ewes. Tasks that were within Ms Loveridge's usual duties.

[27] It was common knowledge that weekends formed part of the normal hours of work on a farm. The issue for farmers is whether, when calculating the weekly, fortnightly or monthly payment of salaries, employees receive not less than the applicable minimum wage for all hours worked during the period of payment. Ms Loveridge has not claimed that she did not receive at least the minimum wage for all hours worked.

[28] Ms Loveridge says the time off in lieu arrangement applied to all weekend duties undertaken by her. I do not accept that. Both Ms Loveridge and Mr Kuegler were clear in their evidence that the time off in lieu arrangement related to the calf rearing duties which were outside Ms Loveridge's usual tasks.

[29] I am not satisfied Ms Loveridge has established her claim for the payment of overtime when undertaking her usual duties over weekends.

### **Counter-claims**

[30] Matira Limited has lodged an application against Ms Loveridge claiming she:

- a) Failed to account fully for her hours worked;

- b) Provided insufficient notice;
- c) Caused livestock losses;
- d) Failed to account for assets owned by Matira.

***Failure to account fully for hours worked***

[31] Matira claims Ms Loveridge failed to provide accurate timesheets for the period 14 – 24 June 2014 and that this has resulted in her being paid for hours not worked from 24 – 27 June. Matira claims reimbursement of an overpayment of \$933.

[32] It was common ground that the employment relationship would end on 30 June 2014 as a result of the farm being sold. During June Ms Loveridge asked Mr Kuegler to pay her the time off in lieu and overtime which she believed was owed to her. The issue was not resolved and on 24 June Mr Karaka told her he would try to resolve the issue with Mr Kuegler. Instead of resolving the issue matters escalated. Mr Karaka and Mr Kuegler approached Ms Loveridge on the farm and Mr Karaka told Ms Loveridge that he had been physically assaulted by Mr Kuegler.

[33] In answer to Ms Loveridge's enquiry about her overtime Mr Kuegler advised her she would not be paid for the overtime. Ms Loveridge told Mr Kuegler she would not bring the last of his stock in that day and walked away. Subsequently Mr Karaka advised Mr Kuegler that he and Ms Loveridge were on strike until he had received an apology for the physical assault.

[34] Matira says withdrawing her labour on the three days 25, 26 and 27 June resulted Ms Loveridge being overpaid and claims repayment of the wages paid for those three days. The Act allows employees to strike for health and safety reasons.<sup>1</sup> Mr Karaka believed he had been physically assaulted by his employer. Mr Kuegler was on notice that Mr Karaka and Ms Loveridge believed they were striking. If he did not want to pay them for the three days he had to give them formal notice of suspension under s 87 of the Act. He did not.

[35] The application for reimbursement of three days when Ms Loveridge withdrew her labour from 25 – 27 June 2014 inclusive is declined.

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<sup>1</sup> Employment Relations Act 2000, s 84.

***Insufficient notice***

[36] Matira claim Ms Loveridge's withdrawal of her labour days before the sale of the farm which was 30 June caused him damage for which he seeks reimbursement.

[37] Because of the sale it was initially agreed that Ms Loveridge's final day of employment would be 30 June 2014. On 16 June this was changed by agreement to 27 June.

[38] Matira says that when Ms Loveridge withdrew her labour on 24 June Mr Kuegler had to perform tasks with the assistance of a neighbour and 3rd party contractors. Matira has estimated the cost as being \$2,000 and seeks payment by way of damages from Ms Loveridge.

[39] Mr Kuegler has provided no evidence of any costs he says Matira incurred in engaging contract labour to assist him in the last three days before handing the farm over to the new owners.

[40] Matira Limited has not established to my satisfaction it has incurred any damages as a result of Ms Loveridge's withdrawal of her labour and its application is declined.

***Caused livestock losses***

[41] Matira says Ms Loveridge was responsible for overseeing the wellbeing and control of all livestock pastured at the farm. Matira claims Ms Loveridge was associated with the losses of the following stock which it says equates to \$20,000:

Rams	4
Ewes (in lamb)	47
Lambs (Prime)	143
Cattle	5
Total	199

[42] In addition Matira claims Ms Loveridge:

- a) failed to ensure stock were adequately fed and claims \$10,500 in respect of 35 Heifers and \$4,500 in respect of baleage; and

- b) failed to adequately feed and attend to 800 plus Ewes amounting to \$16,000.

[43] In total Matira claims payment of damages against Ms Loveridge in the sum of \$51,000.

[44] Ms Loveridge told me she was a general stock hand and was responsible for mustering, daily stock shifts, keeping water to stock, fixing fences, keeping electrics up, drenching, dagging lambs/ewes, drenching/drafting cattle. Ms Loveridge undertook her tasks under the direction of Mr Karaka. Issues relating to stock losses, pregnancy and stock condition were not her responsibility but the responsibility of the farm managers including Mr Karaka and Mr Kuegler.

[45] No evidence to support Matira's claims has been provided to the Authority. Matira has not established to my satisfaction that it has incurred the damages it claims or that Ms Loveridge was responsible and its application is declined.

***Failed to account for assets***

[46] Matira claims that in her final days of employment Ms Loveridge failed to account for various assets belonging to it amounting to \$2,000 including:

- a) Animal health products (6 packs 5 in 1 vaccine + antibiotics);
- b) Electric Fence Testers (2);
- c) Discs (Waikaretu);
- d) Saw Blades (2);
- e) Animal Health Applicators & Tags;
- f) Tux Dog Biscuits;
- g) Dax Bike Box;

[47] Ms Loveridge denies she has failed to account for the assets listed. Ms Loveridge was not the farm manager and did not have responsibility for accounting for farm assets or equipment.

[48] It was common ground that Ms Loveridge took the tux biscuits. They were purchased for her dogs under the agreement she had with Mr Kuegler that Matira would supply the feed for her working dogs.

[49] Matira has not established to my satisfaction its claims that Ms Loveridge has failed to account for farm assets and its application is declined.

**Costs**

[50] Neither party was represented at the investigation meeting and there is no indication on the file that either party incurred any legal costs. Ms Loveridge has been partially successful in her claims. She is entitled to be reimbursed the filing fee of \$71.56 because she had to incur the fee in order to achieve payment of her arrears of wages.

[51] Matira Limited is ordered to pay to Ms Loveridge \$71.56 as reimbursement of the filing fee on her application.

[52] Matira was unsuccessful in its claims against Ms Loveridge. No orders for costs will be made.

Vicki Campbell  
Member of the Employment Relations Authority