

[4] Mr Kendall's personal bankruptcy is not relevant to the Applicant's claim. The Applicant was employed under the terms of an individual employment agreement between him and the Respondent company, not Mr Kendall personally.

[5] Wages owed are a debt of the Respondent. It is a limited liability company. An online check of the Companies Office Register at 12 noon today shows that the Respondent remains registered and is not in liquidation.

[6] I am satisfied that the Respondent has had ample notice and opportunity to respond to the Applicant's claim and no good cause has been shown for the Respondent failing to attend or be represented at the investigation meeting. In these circumstances the Authority may proceed to investigate and determine the matter: Employment Relations Act 2000 ("the Act") Schedule 2 clause 12 and Employment Relations Authority Regulation 9 apply.

[7] The Applicant's statement of problem also referred to raising a personal grievance but there was no evidence that this was raised with his employer in the way required by s114 of the Act. For that reason I cannot address that claim although there was sufficient undefended evidence of unjustified treatment of the Applicant by the Respondent to establish grounds for a grievance and the award of remedies. Similarly there was undefended evidence of a number of breaches of the Applicant's employment agreement that would have warranted the award of a penalty against the Respondent had one been sought.

Background

[8] I accept the affirmed and undefended evidence of the Applicant, a Fijian national, that he was offered a job by the Respondent in March 2007. On the strength of the job offer he signed an employment agreement, gained a permit to enter New Zealand and began work for the Respondent in July 2007.

[9] His employment agreement provided for an hourly rate of \$16 an hour to be paid weekly for working as a heavy machinery operator.

[10] The Applicant's actual working experience was that his hours were irregular and he was paid only twice. At the end of July the Respondent agreed that the Applicant could seek work elsewhere but called him back to work for an additional two weeks in September.

[11] During his time working for the company the Applicant repeatedly asked for wages due to him and to copies of pay slips. Despite this he was not provided with information about his pay and was paid only \$613.72 of \$4160 owed to him in wages for 260 hours worked.

[12] The Applicant says that his employer threatened "*to send me back to my country if I ask for my wages and payslips*".

Determination

[13] The Applicant is entitled to the wages that he claims. He is also entitled to holiday pay of an additional 8% on that amount.

[14] I also think it fit to award interest to the Applicant on the outstanding wages and holiday pay owed to him. Interest is to be paid on the total of this amount for the period from the last day wages were earned, that is 12 September 2007, until the date of this determination, and from the date of the determination until the amount owed is paid. Under clause 11 of the Schedule 2 of the Act interest is awarded at the rate of 8.75 plus two percent.

Order

[15] The Respondent is ordered to pay within 14 days of the date of this determination, the following amounts to the Applicant:

- (i) \$3546.28 in outstanding wages; and
- (ii) \$332.80 in outstanding holiday pay; and
- (iii) Interest of \$151.62 for the period from 13 September 2007 to 23 January 2008 (133 days); and
- (iv) Interest of \$1.14 a day from 24 January 2008 until the amount owed for outstanding wages and holiday pay is paid.

[16] A certificate of determination for these amounts is to be issued with this determination should the Applicant require that certificate for purposes of enforcement action through the District Court under s 141 of the Act.

Robin Arthur
Member of the Employment Relations Authority