

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2012] NZERA Wellington 86
5363684

BETWEEN	RAY JUNIOR KORATU MEYER Applicant
AND	NEIL WARNER First Respondent
AND	MEAT INDUSTRY TRAINING AND EMPLOYMENT LIMITED Second Respondent

Member of Authority: Michele Ryan

Representatives: Applicant in person
Respondent in person

Investigation Meeting: 13 June 2012 at New Plymouth

Determination: 1 August 2012

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Ray Meyer seeks payment from his former employer for unpaid wages, holiday pay and bonuses. Mr Meyer says he is owed the sum of \$1923.00 (gross) for two weeks' unpaid wages and \$192.30 (gross) for one day of unpaid statutory annual leave entitlement. He says he is also owed commission payments of \$10,656.00 (gross).

Background information

[2] On 17 November 2011 Mr Ray Meyer lodged a Statement of Problem with the Employment Relations Authority. He cited Mr Neil Warner as the respondent.

[3] Mr Warner did not respond to the Statement of Problem by lodging a Statement in Reply in accordance with Form 3, Schedule 1, Employment Relations Authority Regulations 2000. Instead Mr Warner wrote to the Authority on 22 November 2011 and advised he had not been Mr Meyer's employer. He said that Mr Meyer had been employed by Meat Industry Training and Employment Limited although Mr Warner acknowledged that he was a director of that company and had been Mr Meyer's manager at the time Mr Meyer's employment terminated.

[4] On 19 December 2011 the Authority received an amended Statement of Problem from Mr Meyer which cited Meat Industry Training and Employment Limited as an additional respondent. Mr Meyer attached to the amended Statement of Problem copies of a letter titled 'Offer of Employment' and his employment agreement. Both documents tended to support the proposition that Mr Warner (as opposed to Meat Industry Training and Employment Limited) had been Mr Meyer's employer.

Investigation meeting

[5] At the Authority's investigation meeting Mr Warner conceded that at all material times he had been Mr Meyer's employer.

[6] Mr Warner also acknowledged that Mr Meyer was owed two weeks wages as well as one day's entitlement to annual leave. He agreed that payment of outstanding commission was also owed to Mr Meyer.

[7] Mr Warner advised that he had not paid the sums owed because he did "not have the money to pay" Mr Meyer. I understand Mr Warner to say he is impecunious however Mr Warner did not provide any evidence to the Authority to support his assertion as to his financial position.

[8] During the investigation meeting a brief discussion was held as to whether Mr Warner was able to pay Mr Meyer the sums owed by way of instalments however no

agreement was reached between the parties as to what monies would be paid and when payments would be made.

Determination

[9] I am satisfied from the information provided to the Authority that the sum of money (in total \$12,771.30) calculated by Mr Meyer as owed to him should be paid. Mr Warner accepted that the sum of money claimed was correct and owed to Mr Meyer. There was no evidence to support an order for payment by instalments pursuant to s 131(1A) of the Employment Relations Act.

Orders

[10] Under s131 of the Employment Relations Act I order Mr Warner to pay Mr Meyer wage arrears of \$1923.00 plus Mr Meyer's outstanding annual leave entitlement of \$192.30. Mr Warner must also pay \$10,656.00 as outstanding commission. In total Mr Warner must pay Mr Meyer \$12,771.30 (gross). Any tax including PAYE that is required to be paid to Inland Revenue in relation to Mr Meyer's claim is the responsibility of Mr Meyer.

[11] Should Mr Warner fail to make payment of \$12,771.30 to Mr Meyer, Mr Meyer may file an application in the District Court for enforcement of the determination by the court's bailiffs,¹ or seek a compliance order in the Authority.²

Costs

[12] Costs are reserved

Michele Ryan
Member of the Employment Relations Authority

¹ Section 141 of the Employment Relations Act

² Section 137(1)(b) of the Act