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Paterson v DDUP NZ Limited (Wellington) [2018] NZERA 2107; [2018] NZERA Wellington 107 (28 November 2018)

Last Updated: 11 December 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

[2018] NZERA Wellington 107
3037735

BETWEEN JOHN PATERSON First Applicant

AND DDUP NZ LIMITED Respondent

Member of Authority: M B Loftus

Representatives: Applicant in Person

Nil for Respondent

Investigation Meeting: By telephone on 28 November 2018 and on the papers

Determination: 28 November 2018

DETERMINATION OF THE AUTHORITY

[1] John Paterson seeks the payment of money he says was due upon termination but yet to be received from his ex-employer, DDUP NZ Limited (DDUP). In particular he says he is still to be paid for his last weeks' work along with payment for a further five days in lieu of having worked weekends. The total sought is \$2,384.00 gross.

[2] There is also an issue concerning PAYE with Mr Paterson suspecting PAYE deducted from his wages was never forwarded to the Inland Revenue Department.

[3] DDUP's position is unknown given its failure to participate in the Authority's process. Indeed it has actively sought to avoid the claim choosing instead to return all papers served upon it including those I instructed be personally served at the address recorded with the Companies office by one of the Authority's support officers.

DDUP's action are not, however, a surprise as this is not the first time I have dealt with its uncooperative approach.¹

[4] DDUP's approach means no statement in reply was filed as required by the Regulations.² That in turn means the claim can only be defended with the Authority's leave.³ Such leave has not been sought.

[5] That and DDUP's shameless refusal to address the claim leads me to conclude there is nothing to be gained by trying to engage further and this matter is best dealt with. Mr Paterson is entitled to have his claim considered and DDUP cannot avoid its obligations by ignoring the issue.

[6] Mr Paterson was employed by DDUP as its General Manager with the fact of employment being confirmed by a written employment agreement. He resigned in circumstances which suggest there could have been other claims he has chosen not to pursue. Instead his claim is limited to out the arrears and is supported with considerable documentation.

[7] Having reviewed the documents, spoken to Mr Patterson and noted the lack of denial I accept his wage claim.

[8] There is the PAYE issue. Mr Paterson accepts he is yet to raise this with the IRD and his concerns are no more than suspicions. It is therefore difficult to take this further and all I can do is caution DDUP that if there is validity to this concern it forward the appropriate sum to IRD with alacrity.

[9] Finally there is the issue of costs to which Mr Paterson is entitled having been wholly successful. Given he is self-represented these are, however, limited to reimbursement of the Authority's filing fee. That too is payable.

Conclusion and Orders

[10] For the above reasons I order the respondent, DDUP NZ Limited, pay the applicant, John Paterson:

¹ Refer *McKeich and Hanson v DDUP NZ Ltd* [2018] NZERA Wellington 102

² Regulation 8(1) of the [Employment Relations Authority Regulations 2000](#)

³ Above n 2 at Regulation 8(3)

a. \$2,384.00 (two thousand, three hundred and eighty four dollars) gross as being unpaid wages; and

b. A further \$71.56 (seventy one dollars and fifty six cents) being

reimbursements of the Authority's filing fee which Mr Paterson paid.

[11] The above payments are to be made no later than 4.00pm on Wednesday 19 December 2018.

[12] In closing I advise the respondent and its director, Shengjun Wang, of two further points. The first is that as this determination involves a failure to pay wages due to an employee the director may be held personally liable should DDUP not rectify its failure.⁴ The second is continuing failure may result in further consequences that could potentially include the imposition of fines, the sequestration of property and/or imprisonment.

M B Loftus

Member of the Employment Relations Authority

⁴ [Sections 142W](#) and [142Y](#) of the [Employment Relations Act 2000](#)

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