

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 150
5518018

BETWEEN	JONATHAN TREVOR PRINS Applicant
A N D	MICHAEL ARCHER DAVIS First Respondent
AND	JEREMY WAYNE VIALL Second Respondent
AND	J A E SALES LIMITED Third Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in person
No appearance by First Respondent
Jeremy Viall in person as Second Respondent and as
Director of Third Respondent

Investigation Meeting: On the Papers

Date of Determination: 26 May 2015

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Mr Davis and Mr Viall are both directors and shareholders of JAE Sales Limited (JAE Sales). Mr Prins was employed as a butcher by JAE Sales Limited (trading as The Aussie Butcher Birkenhead) from 24 March 2008 until 27 March 2013.

[2] Mr Prins bought a successful wage arrears claim to the Authority in October 2013. The Authority awarded Mr Prins a total of \$4,436.86¹. The Authority understands that this determination is subject to a de novo challenge that has not yet

¹ [2013] NZERA Auckland 489.

been heard by the Employment Court. The wage arrears proceedings in the Authority involved Mr Prins and JAE Sales.

[3] Mr Prins makes the following claims against the first respondent, Mr Davis:

- (a) *Failure to direct the company under his direction to present him [Mr Prins] with an employment agreement;*
- (b) *Failure to attend an Employment Relations Authority investigation hearing or to send an authorised person to attend on his behalf;*
- (c) *Failure to present evidence despite several requests and instructions to do so by Member Larmer;*
- (d) *Failure to keep accurate staff holiday and leave records;*
- (e) *Failure to keep or provide access to holiday and leave records;*
- (f) *Unauthorised deductions from his wages that he [Mr Prins] was unaware of and did not consent to;*
- (g) *Authorising the default and payment of one weeks' wages;*
- (h) *Authorising the default and payment of outstanding holiday pay.*

[4] Mr Prins makes the following claims against the second respondent, Mr Viall:

- (a) *Failure to direct the company under his direction to present him [Mr Prins] with an employment agreement;*
- (b) *Failure to attend an Employment Relations Authority investigation hearing or to send an authorised person to attend on his behalf;*
- (c) *Failure to present evidence despite several requests and instructions to do so by Member Larmer;*
- (d) *Failure to keep accurate staff holiday and leave records;*
- (e) *Failure to keep or provide access to holiday and leave records;*
- (f) *Unauthorised deductions from his wages that he [Mr Prins] was unaware of and did not consent to;*

- (g) *Authorising the default and payment of one weeks' wages;*
- (h) *Authorising the default and payment of outstanding holiday pay.*

[5] Mr Prins makes the following claims against the third respondent, JAE Sales:

- (a) *Failure to present me [Mr Prins] with an employment agreement;*
- (b) *Failure to attend an Employment Relations Authority investigation hearing;*
- (c) *Failure to present evidence despite several requests and instructions to do so by Member Larmer;*
- (d) *Failure to keep accurate staff holiday and leave records;*
- (e) *Failure to keep or provide access to Holiday and Leave records;*
- (f) *Unauthorised deductions from my [Mr Prins'] wages;*
- (g) *Failure to pay one week's wages;*
- (h) *Failure to pay outstanding Public Holiday pay.*

Issues

[6] The Authority can only investigate claims it has jurisdiction over. The Authority's jurisdiction is found in the Employment Relations Act 2000 (the Act).

[7] The Authority held a case management conference investigation meeting on 12 February 2015 which Mr Prins and Mr Viall (on behalf of himself and JAE Sales Limited) attended. The various jurisdictional issues with the claims Mr Prins wished to pursue were raised with the parties.

[8] Mr Prins was urged to take legal advice and was given an opportunity to file an Amended Statement of Problem (ASoP). The Authority made it clear to the parties that it was not the Authority's role to formulate claims for parties as that was a matter for them and their advisors. The Authority's role was to investigate the claims that are identified in the Statement of Problem (or ASoP as the case may be) provided that it had jurisdiction to do so.

[9] The parties also received additional mediation from a Ministry of Business Innovation and Employment mediator. Mediation was unsuccessful and Mr Prins wants the Authority to investigate his claims. This determination deals only with the Authority's jurisdiction to do so.

Jurisdiction

[10] The Authority's jurisdiction is set out in s161 of the Act. Apart from the limited exception in s.134(2) of the Act, the Authority's jurisdiction is limited to investigating employment relationship problems which arise between parties to an employment relationship, as defined in sections 5 and 4(2) of the Act.

First Respondent

[11] I find that Mr Prins and Mr Davis are not and were never in an employment relationship. None of the claims that Mr Prins wishes to pursue against Mr Davis are claims that the Authority has jurisdiction to investigate and/or determine given the way in which they have been formulated.

[12] Given that the Authority does not have jurisdiction to investigate any of the eight claims that Mr Prins wishes to pursue against Mr Davis, I order that Mr Davis be removed as a party to these proceedings.

Second Respondent

[13] I find that Mr Prins and Mr Viall are not and were never in an employment relationship. None of the claims that Mr Prins wishes to pursue against Mr Viall are claims that the Authority has jurisdiction to investigate and/or determine given the way in which they have been formulated.

[14] Given that the Authority does not have jurisdiction to investigate any of the eight claims that Mr Prins wishes to pursue against Mr Viall, I order that Mr Viall be removed as a party to these proceedings.

Third Respondent

[15] I am satisfied that Mr Prins was in an employment relationship with the third respondent JAE Sales.

[16] The Authority does have jurisdiction to investigate the following claims against JAE Sales:

- (a) *Failure to present Mr Prins with an employment agreement;*
- (b) *Failure to keep accurate holiday and leave records;*
- (c) *Failure to provide access to holiday and leave records upon request.*

[17] The Authority will write to the parties to timetable its investigation into these three claims.

[18] I find that the Authority does not have jurisdiction to investigate Mr Prins' claim that JAE Sales failed to:

- (a) *Attend an Employment Relations Authority investigation hearing.*²
- (b) *Present evidence despite several requests and instructions to do so by Member Larmer.*³

[19] I also find that the Authority does not have jurisdiction to investigate the current following claims as per this Amended Statement of Problem:

- (a) *Unauthorised deductions from wages;*
- (b) *Failure to pay one week's wages;*
- (c) *Failure to pay outstanding public holiday pay.*

[20] The reason the Authority does not have jurisdiction to investigate the above claims is that each of these above claims has already been the subject of investigation and determination by the Authority in October 2013.⁴ The October determination is currently the subject of a de novo Employment Court challenge. Mr Prins is unable to re-litigate these same claims in the Authority.

² This claim relates to the Authority's investigation meeting on 24 October 2013.

³ Supra

⁴ Ibid 1

Costs

[21] Costs are reserved and will be dealt with at the conclusion of the substantive matter.

Rachel Larmer
Member of the Employment Relations Authority