

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKAURAU ROHE**

[2024] NZERA 241  
3254779

BETWEEN QUBE LOGISTICS NZ  
LIMITED  
Applicant

AND RIKKI-LEE JULIAN  
Respondent

Member of Authority: Sarah Blick

Representatives: Scott Jenner for the applicant  
None for the respondent

Investigation Meeting: On the papers

Information received: 25 January and 24 April 2024 from the applicant  
None from the respondent

Determination: 26 April 2024

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Qube Logistics NZ Limited (Qube) employed Rikki-Lee Julian as a customer service officer pursuant to a fixed term agreement which ended on 14 February 2023. Qube says it overpaid Ms Julian by two weeks at the end of her employment in the amount of \$2,174.81. Ms Julian acknowledged the overpayment and advised Qube she had paid the money back. Qube says it never received it and has applied to the Authority to recover the amount.

**The Authority's process**

[2] Qube lodged its application with the Authority on 3 October 2023. The Authority's records show Ms Julian was served with the application on 4 October 2023. Ms Julian failed to lodge a statement in reply within the required timeframe, which the

Authority brought to her attention. By email on 22 October 2023, Ms Julian advised she would respond by 26 October 2023. No response was received.

[3] Ms Julian continued to be copied in on Authority email correspondence once the matter was allocated to me. After some effort, an Authority Officer was able to engage with Ms Julian who ultimately attended a case management conference on 25 January 2024. Qube's New Zealand Manager Scott Jenner attended as its representative. During the call Ms Julian accepted the amount claimed was an overpayment but reiterated her position that she had paid back the overpayment. She agreed to provide further information from her bank which confirmed she made the payment.

[4] Despite having ample opportunity to do so and the Authority's subsequent email correspondence, Ms Julian has failed to provide any further information since the call or reply to any correspondence.

[5] Qube consents to this matter has been determined on the papers.

[6] As permitted by s 174E of the Employment Relations Act (the Act), this determination states findings of fact and law, expresses conclusions on issues necessary to dispose of the matter, and specifies orders as a result.

### **Issues**

[7] The following are the issues for investigation and determination:

- (a) Whether Qube overpaid Ms Julian by \$2,174.81;
- (b) Whether Ms Julian repaid Qube as claimed;
- (c) If not, whether Qube can recover the overpayment.

### **Background**

[8] Qube has provided the Authority with a copy of a signed fixed employment agreement between the parties, which states employment would continue until 28 February 2023, or end before if either party terminated the agreement in accordance with its terms. It is common ground the employment ended early on 14 February 2023.

[9] Qube has provided a printout of its ANZ Business Current account transactions with its account number (Qube's account number) showing its transactions on 15

February 2023. It shows that on 15 February 2023 a salary payment of \$3,958.88 was made to Ms Julian. Qube says this amount included a mistaken overpayment of \$2,174.81 for hours Ms Julian did not work.

[10] Qube has also provided the Authority with email correspondence between Qube and Ms Julian. It shows on 20 February 2023 a Qube Customer Service Manager (the manager) had promptly raised the overpayment issue with Ms Julian, and mentions the issue of “the overpayment”, saying they would be happy to assist if there were any questions.

[11] A subsequent email response from Ms Julian on 21 February 2023 says she had a couple of questions regarding the overpayment, saying it was a bit annoying, and “I’ll be cleared up Friday so can give you a call then”.

[12] On 27 February 2023 the manager emailed Ms Julian again, saying the employment ended on 14 February 2023 as agreed. The email apparently attached an incorrect payslip showing the overpayment, and the “correct” payslip showing Ms Julian finished employment on 14 February 2023 at a take home pay of \$1,784.07. The email points out the difference in hours in the incorrect payslip of 173.33 versus the 72 hours due for payment, identifying the monetary difference of \$2,174.81. The email provided Qube’s account number, saying to Ms Julian to let them know if she needs anything else and when she can transfer the payment. Ms Julian responded the same day, saying thanks for the payslips and “I’ll send confirmation once payment has been made over the next few days”.

[13] The manager followed up a few days later on 3 March 2023 asking Ms Julian “how she had gone with this”. Ms Julian responded on 6 March 2023 stating:

Hi, just got your missed call. Can I transfer it to the QUBE Global account? So the account I was paid from? Otherwise I have to go to bank for international transfers and I’m about to leave for the airport. Sorry I didn’t do it last week I’m in holiday mode, running on my time and don’t really give a shit about anything else lol Let me know

[14] In response, on the same date, the manager emailed Qube’s number again, asking if that was the account she had been paid from.

[15] On 9 March 2023 the manager emailed Ms Julian again asking if she had any luck, saying they appreciated she was away but that it needed to be sorted as it was starting to “drag on”.

[16] On the morning of 23 March 2023 Ms Julian responded saying it was the same account and “will put through tonight”. At 10.04pm the same date, she advised “payments done”.

[17] A screenshot of a payment was sent to Qube of a payment the next day, 24 March 2023. It says a \$2,174.81 payment on Friday 24 March 2023 to Qube’s account with the reference “RJULIAN” was “successful”. The screenshot says payments to Kiwibank accounts are processed immediately, and payments to other banks are sent “every hour between 9am and midnight on business days”.

[18] On 3 April 2023 the manager emailed Ms Julian and asked her to check with her bank as Qube was yet to receive the payment.

[19] On 11 April 2023 Ms Julian responded saying “This has been chased up as far as calling up. Was processed around 11am in 24/3.”

[20] On 20 April 2023 Mr Jenner appears to have emailed Ms Julian advising he was in the process of lodging the issue with a debt collection agency but would give Ms Julian a final chance to return the funds before it was started. A warning was given that once the process was initiated “it cannot be reversed”.

[21] Ms Julian emailed Qube on 21 April 2023 saying:

Have had it confirmed twice now. I’m not going round in circles and won’t allow myself to be messed over the way [name], [name] and [name] were. I’ve done what I needed to do and can back that so I’ll dispute it. Do what you need to do.

[22] On 21 April 2023 Mr Jenner further emailed Ms Julian as follows:

I have seen the transfer you sent from Kiwi bank but the funds have never been received into our account  
What was being asked was for you to check that the funds had been taken from your account with proof of this as without us physically seeing the funds we have no way to track this with your Kiwi bank account...this needs to be done by yourself

This should be able to be done quite easily by yourself but if not then we have no recourse but to follow with debt recovery agency and as advised once initiated then this cannot be reversed  
Leave it with you to decide what option is best for you to proceed with

[23] By 8 May 2023, Qube had engaged a debt collection agency, a representative from whom emailed Ms Julian that day regarding a “formal demand” for payment requiring her “urgent attention”. On 8 May 2023 Ms Julian responded:

I'll be disputing this matter as I paid the amount into Qubes account already.  
I'm not paying again. And if it results in me being knocked back for finance  
I'll be talking all involved to court for the amount I get knocked back on.

[24] Qube has provided the Authority with a copy of its bank transactions for the period 24 March 2023 to 31 March 2023, which do not show any payment in the amount claimed into Qube's account with the reference “RJULIAN”.

### **Qube overpaid Ms Julian by mistake**

[25] The information received establishes Qube overpaid Ms Julian by the amount claimed on 15 February 2023. The overpayment was made by mistake, and was promptly drawn to Ms Julian's attention. Ms Julian has never disputed she was overpaid and has not taken issue with the calculation of the overpayment.

### **Ms Julian has not repaid the amount sought**

[26] I am satisfied, on the balance of probabilities, that Ms Julian has not paid back the overpayment. Although there is evidence that a payment of the correct amount was generated on 24 March 2023, there is no corresponding evidence to show it was in fact processed by Kiwi bank. According to the screenshot Ms Julian provided to Qube, the payment would have been processed at the latest on Monday 27 March 2023. Had the payment in fact been processed, this would have been and could still be easily proved by Ms Julian. Had the payment in fact been made and never reached Qube, it is implausible Ms Julian would not have taken further steps to follow up with her bank.

### **Whether Qube can recover the overpayment**

[27] The Authority's general jurisdiction to resolve “a problem that relates to or arises from an employment relationship” was clarified by the Supreme Court in *FMV v TZB*.<sup>1</sup> A claim by an employer seeking reimbursement of an overpayment of wages

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<sup>1</sup> *FMV v TZB* [2021] NZSC 102.

where the employment has ended is within the Authority's remit under s 161(1) of the Act. The Employment Court has previously specifically found the Authority has jurisdiction to determine overpayment claims, framed as restitution/unjust enrichment.<sup>2</sup> Elements required were said to be:

- (a) proof of an enrichment of by receipt of a benefit;
- (b) a corresponding deprivation of the donor; and
- (c) the absence of some legal principle justifying the enrichment.

[28] I accept the elements are met here - Ms Julian received an overpayment of wages to which she was not entitled, she has failed to pay the overpayment back to Qube and as such has been enriched at the expense of and to the detriment of Qube. Given her stance that she has already paid back the overpayment, Ms Julian is unable to provide any evidence that she altered her position detrimentally in reliance on the money received. I am unable to find any legal basis on which she should not have to pay it back to Qube.

[29] I note that should Ms Julian not finally resolve the overpayment, then Qube may seek a compliance order and if such an order is not complied with, there is an ability to seek a further compliance order in the Employment Court, and other sanctions may be imposed including a fine not exceeding \$40,000.<sup>3</sup>

### **Outcome**

[30] Rikki-Lee Julian is ordered to pay \$2,174.81 to Qube Logistics NZ Limited within 21 days of the date of this determination.

### **Costs**

[31] Qube does not seek any costs. Rikki-Lee Julian is however ordered to reimburse Qube Logistics NZ Limited \$71.55, being the Authority application fee.

Sarah Blick  
Member of the Employment Relations Authority

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<sup>2</sup> *New Zealand Fire Service Commission v Warner* [2010] NZEmpC 90 at [19] and [39].

<sup>3</sup> Employment Relations Act 2000, section 140(6).