



wage arrears claim of Mr Raj, the gross sum in question is \$13,760 less PAYE tax of \$4,719.68; leaving a net amount due of \$9,040.32. The letter informs further that Mr Raj was paid \$6,000 in cash from sales takings and the remaining \$3,040 was paid by cheque number 2613, dated 10 May 2006. The accounting entry recorded (apparently) was a wages debit of \$6,000 and a sales credit of the same amount and GST was paid on the sales figure of \$6,000. The bank records for QSMC show that cheque number 2613 (\$3,040.32) was cashed on 10 May 2006.

[3] In regard to the claim of Mr Raj for holiday pay, the response for QSMC shows that the last day of employment for Mr Raj was 28 April 2006 and he was paid his last week's wages on 27 April 2006 by direct credit to his bank account. And on 10 May 2006, Mr Raj was paid a further net sum of \$729.38 (holiday pay) via cheque number 2560, as revealed in the ledger report for the period from 1 April 2006 to 31 May 2006.

[4] The file shows that the parties were referred to mediation and on 22 January 2010, the Authority received an email from a Department of Labour mediator who informed that the matter had been settled. However, on 30 November 2011, Mr Raj wrote to the Authority (via email) informing that:

As discussed today,<sup>1</sup> I would like the matter to be heard as I will be providing new evidence and will be using a professional Accountant<sup>2</sup> to explain and establish that Queen Street Medical Centre did not settle the owed salary to me fairly.

[5] Upon the file being referred to me, given that a mediator had informed that the matter was settled on 13 December 2011, I requested a copy of the record of settlement. Subsequently, the mediator informed that there was a verbal agreement reached as an outcome of the mediation held on or about 22 January 2010, but Mr Raj declined to sign a "draft" record of settlement.

[6] The Authority Support Officer sought to arrange a conference call with the parties and received an email from Mr Dutt on behalf of QSMC, whereby he expressed surprise that the matter had "come up again" as he and Dr Singh were under the impression that matters had been resolved at mediation in January 2010. It is

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<sup>1</sup> Presumably with a Support Officer.

<sup>2</sup> Mr Raj did not provide any material prepared by a "professional Accountant."

entirely understandable why the respondent would be under this impression as the draft record of settlement (produced by agreement of the parties) shows at clause 2:

Parties have discussed the issues raised by the Applicant and bank statements have shown that all payments claimed were made in April and May 2006 to two different bank accounts belonging to Deo Raj. In the light of this, the matter is now resolved and the file will be withdrawn from the Employment Relations Authority immediately.

[7] The outcome of a conference call with the parties was an agreement that the matter would be determined on the papers. The Authority has now received a variety of material from both parties, including bank statements and Inland Revenue records, along with written submissions applicable to their respective positions.

[8] However, subsequent to the conference call with the Authority, Mr Raj amended his claim for wage arrears. He now alleges that he is owed \$31,181.51. Mr Raj also says that he is owed \$960 representing unpaid holiday pay for one week.

## **Analysis and Conclusions**

### ***The wage arrears claim***

[9] The basis of the claim by Mr Raj is that he commenced his employment at the QSMC in March 2005 and was initially paid \$16 per hour. The hours of work were something less than fulltime. Mr Raj says that subsequently he was employed on a fulltime basis and it was agreed that he would then be paid \$24 per hour. But Mr Raj says that he continued to be paid only \$16 per hour until he ceased his employment on 28 April 2006. Therefore, the calculations that he has advanced are based on the premise, according to Mr Raj, that he was only paid \$16 per hour for the totality of his employment.

[10] However, the overall evidence does not support this claim. The wages reconciliation (the record)<sup>3</sup> provided for QSMC shows firstly, that Mr Raj commenced his employment on 30 May 2005 not March 2005 as he alleges.<sup>4</sup> The record shows that Mr Raj was working 32 hours per week from 30 May 2005 until 29 August 2005 when his hours increased to 40 per week, along with an increase in pay to \$24 per hour. The net pay consequently went from \$818.60 per fortnight to

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<sup>3</sup> The result of an historical analysis of the payments received by Mr Raj as an apparent result of the escalation of his claim from the one originally filed.

<sup>4</sup> However, Mr Raj may be correct about his start date as it seems he was paid cash for the initial period of his employment. I also note that Mr Raj was receiving a WINZ benefit up until 3 June 2005.

\$1,460.68; paid by automatic payment to the bank account of Mr Raj. Indeed, the bank account records provided by Mr Raj confirm the payment schedule provided by QSMC.

[11] Further, it is submitted for QSMC that:

By way of background our client advises that Mr Raj constantly “hounded” them about being underpaid at an hourly rate of \$16 per hour when he should have been paid \$24 per hour.

As mentioned earlier Dr Singh runs a very busy medical practice and to get Mr Raj “off his back” he instructed the practice manager to recalculate the wages at \$24 per hour and just pay him. Little did he realise that Mr Raj was already being paid at \$24 per hour from 29 August 2005. To make things worse the practice manager accepted his instructions at face value and paid him a net sum of \$9,040.32, being a gross sum of \$13,760 less PAYE tax of \$4,719.68. Details of this have been provided previously. So in summary, Mr Raj was not entitled to any of this back pay as he had been paid correctly during the course of his employment as shown in Appendix 1.

[12] It is submitted for QSMC that Mr Raj has been overpaid wages by the net sum of \$9,040.32. An order is sought for repayment of this amount. I will return to this matter later in this determination. But in regard to the wage arrears claim of Mr Raj, on the persuasive weight of the evidence available, I find that Mr Raj was paid his due wage entitlements during the period of his employment and there is no validity in regard to his claim to the contrary.

### ***The holiday pay claim***

[13] The records provided by QSMC (which I have no reason to doubt) show that contrary to the allegation of Mr Raj that he was short paid on his holiday pay; he was actually overpaid by \$2,128.86. QSMC seek an order that Mr Raj repay this sum. On the basis of the records provided by QSMC, I am satisfied that Mr Raj has received holiday pay of \$2,128.86 (net) that he was not entitled to; and he should repay this sum.

### ***The counterclaim for the overpayment of wages***

[14] The evidence provided by QSMC refers to a cash payment of \$6,000 being made and also a payment by cheque for the sum of \$3,040.32; being a total of \$9,040.32 (net) that QSMC allege that Mr Raj was overpaid. Unfortunately, there is not sufficient evidence to show that the cash payment was made or received. And

while there is a QSMC bank statement entry showing that a cheque for \$3,040.32 was cashed on 10 May 2006, the evidence as to whether Mr Raj received this cheque is contested and there is no record of it being banked into his bank account. Therefore, given that the evidence pertaining to the alleged overpayment of wages is inconclusive, I have to decline to make the order for repayment that is sought by QSMC.

### **Determination**

[15] For the reasons set out above, I find:

- a. The claims of Mr Raj for arrears of wages and holiday pay are unsuccessful.
- b. The counterclaim of QSMC for repayment of wages is not proven and hence it is unsuccessful.
- c. The counterclaim for overpayment to Mr Raj of the sum of \$2,128.86 as holiday pay is proven to my satisfaction on the balance of probabilities. Mr Raj is ordered to pay to Queen Street Medical Centre Limited, within 30 days, the net sum of \$2,128.86.

### **Costs**

[16] Costs are reserved. The respondent has 28 days from the date of this determination to file and serve costs submissions. The applicant has a further 14 days to file and serve his submissions.

**K J Anderson**  
**Member of the Employment Relations Authority**