

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2019] NZERA 624
3062643

BETWEEN RAW SUSHI LIMITED
 Applicant

AND SARAH BEANEY
 Respondent

Member of Authority: Michael Loftus

Representatives: Jin Ho Nam on behalf of Applicant
 Respondent on own behalf

Investigation Meeting: On the papers with input up to and including
 22 August 2019

Determination: 31 October 2019

**DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

Employment relationship problem

[1] On 2 May 2019 I issued a determination in a matter between these parties but in which Ms Beaney was the applicant.¹ I concluded Ms Beaney had been unjustifiably dismissed and awarded remedies totalling \$12,571.56.

[2] That determination generated this application from the then respondent, Raw Sushi Limited. The company seeks an order the payment be made by instalment pursuant to s 123(2) of the Employment Relations Act 2000 (the Act).

[3] Ms Beaney opposes the application and seeks immediate payment.

[4] The parties agreed the matter be determined on the papers.

¹ [2019] NZERA 261

Discussion

[5] Raw Sushi asks it be allowed to pay the amount ordered via monthly instalments of \$500. In support of its application it provided a bank statement covering one month and a short affidavit in which Mr Nam asserts it is not in a position to pay the amount ordered *in one lot*.

[6] As already said Ms Beaney opposes the application. She does so on the basis Raw Sushi's owners are capable of paying the amount in full. She also has concerns about the time that would pass should Raw Sushi's application be accepted and the possibility its circumstances might change in the interim. She goes on to submit the bank statement is inadequate and other factors such as assets and their values should be considered. She also queries a single month's statement especially as it covered a period after the outcome was known.

[7] This input was followed by a telephone conference after which Raw Sushi provided further bank statements covering a significantly wider period.

[8] As I advised Ms Beaney during the telephone conference the original orders are against Raw Sushi Limited. The personal circumstances of its owners therefore play little part in this consideration as orders cannot be made against them given the issues originally in dispute did not include a wage arrears component.

[9] Her submissions do, however, raise a significant point and that concerns the usefulness of the bank statements.

[10] Section 123(2) of the Act provides the Authority may order payment by instalment, but only if the employer's financial position requires it.

[11] Raw Sushi is the applicant in this matter and carries the onus of establishing its situation requires payment by instalment. This was explained during the telephone conference which led to the production of additional bank statements.

[12] While the bank statements show the company has limited cash reserves I cannot conclude they give a comprehensive picture. They indicate what I would consider a reasonable income stream though there are also significant outgoings. Included therein however are items which have the appearance of being personal as opposed to business expenditure. Also included are significant payments under the

heading *payroll*. Ms Beaney asserts these are actually shareholder drawing or some other form of payment to the owners and this assertion is not denied. Finally there are also significant unexplained internet transfers.

[13] In other words the bank statements provide little concrete evidence of the true situation. Add to that the question of assets about which the company has chosen to provide no information despite having advised full accounts, albeit a bit dated, were available.

[14] The onus was explained but notwithstanding that Raw Sushi has failed to provide sufficient information to convince me its situation requires payment by instalment.

Conclusion and Orders

[15] For the reasons above Raw Sushi's application it be allowed to pay Ms Beaney be instalment fails. As a result I order Raw Sushi Limited pay Ms Beaney any amount outstanding from that awarded on 2 May 2019, in full, no later than 4.00pm Thursday 14 November 2019.

Michael Loftus
Member of the Employment Relations Authority