



# New Zealand Employment Relations Authority Decisions

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## **Saldarriaga v All Construction Limited (Wellington) [2017] NZERA 2122; [2017] NZERA Wellington 122 (1 December 2017)**

Last Updated: 15 December 2017

### **IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON**

[2017] NZERA Wellington 122

3022636

BETWEEN ANGEL ALONSO ROMERO SALDARRIAGA

Applicant

AND ALL CONSTRUCTION LIMITED

Respondent

Member of Authority: M B Loftus

Representatives: Angel Saldarriaga, on own behalf

No appearance for Respondent

Investigation Meeting: On the papers along with a telephone conference on 22

November 2017

Determination: 1 December 2017

### **DETERMINATION OF**

#### **THE EMPLOYMENT RELATIONS AUTHORITY**

[1] The applicant, Angel Saldarriaga, seeks payment of wages he says he is yet to receive from the respondent, All Construction Limited. The amount sought is \$832.00.

[2] All Construction's position is unknown given a failure to participate in the Authority's process. There is no statement in reply and All Construction did not participate in a telephone conference held to discuss the claim on 22 November 2017. It has not responded to messages the Authority left on the cell phone of its sole director and shareholder, Luey Bradley, and it refused to participate in a mediation as initially sought by Mr Saldarriaga.<sup>1</sup>

[3] That said there can be no doubt All Construction is, at least should be, aware of the claim. All companies are required to have an address for service.<sup>2</sup> All Construction's is 3A

Forresters Lane, Te Aro, Wellington. The evidence satisfies me the relevant papers have been

<sup>1</sup> Letter Ministry of Business, Innovation and Employment to Saldarriaga dated 1 November 2017

<sup>2</sup> [Section 192\(1\)](#) of the [Companies Act 1993](#)

delivered to that address. I also note an unsuccessful attempt to send copies to Mr Bradley's home address as recorded by the Company's Office.

[4] Finally I note regulation 8(3) of the Employment Relations Authority Regulations

2000. Now the claim can only be defended with leave of the Authority. Such leave has not been sought.

[5] Given the circumstances, the amount involved, and the fact Mr Saldarriaga has now left New Zealand given the expiration of his work visa I consider this is a matter I should determine on the papers as, during the telephone conference, I heralded I might if All Construction continued to ignore the claim.

[6] As already said I held a telephone conference on 22 November 2017 during which I at least spoke to Mr Saldarriaga. To that I add documentary evidence Mr Saldarriaga furnished which leaves me in no doubt his claim has merit.

[7] In particular I note bank statements which confirm his claim he was employed by All Construction Limited and had been receiving wages from it until the date he says these ceased along with a series of text exchanges between Mr Saldarriaga and Mr Bradley.

[8] The texts start with ones which confirm commencement of the employment in August

2017. That is followed by a query Mr Saldarriaga sent on 5 October asking where his latest pay might be. The response is payment was coming. The exchanges continued for five days at which point Mr Bradley promised the payment would be made on Friday 13 October.

[9] On the Thursday an issue arose about the hours Mr Saldarriaga actually worked with Mr Bradley sending a text saying the hours claimed were wrong. Mr Bradley failed to explain that assertion when asked what was wrong and ended the exchange with an expletive.

[10] Mr Saldarriaga then tried to resolve the issue via email with the last being sent on 3

November but Mr Bradley failed to reply.

[11] Mr Saldarriaga says he is yet to receive the payment and his bank statements support that.

[12] Having spoken to Mr Saldarriaga and examined the documentation, especially Mr Bradley's initial concession payment would be forthcoming, I accept the claim. Payment will be ordered accordingly.

[13] In addition there is the filing fee which, given Mr Saldarriaga was self-represented, is the only recoverable cost. His success means it is also payable.

### **Conclusion and Orders**

[14] For the above reasons I order the respondent, All Construction Limited, pay the

Applicant, Angel Saldarriaga:

- a. Outstanding wages in the amount of \$832 (eight hundred and thirty two dollars); and
- b. A further \$71.56 (seventy one dollars and fifty six cents) being reimbursements of the filing fee Mr Saldarriaga paid.

[15] Payment can be made to the same account as earlier wage payments and this is to occur no later than 4.00pm on Friday 15 December 2017.

[16] In closing I caution the respondent and its director, Mr Bradley, that failure to comply with the above orders may result in further consequences, some of which are potentially serious. They could potentially include the imposition of fines, the sequestration of property and/or imprisonment.

M B Loftus

Member of the Employment Relations Authority