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Sami v Optimizer HQ Limited (Auckland) [2016] NZERA 506; [2016] NZERA Auckland 342 (11 October 2016)

Last Updated: 2 December 2016

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2016] NZERA Auckland 342
5595396

BETWEEN LAWRENCE BANABA SAMI Applicant

A N D OPTIMIZER HQ LIMITED Respondent

Member of Authority: T G Tetitaha

Representatives: I Hutcheson, Counsel for the Applicant

No appearance by or on behalf of Respondent

Investigation Meeting: On the papers Submissions Received: None from either party Date of Determination: 11 October 2016

DETERMINATION OF THE AUTHORITY

A. Optimizer HQ Limited is to pay Lawrence Banaba Sami wage arrears of \$104,723.42 pursuant to [s.131](#) of the [Employment Relations Act 2000](#).

B. Optimizer HQ Limited is further directed to pay the sum of

\$1,316.90 to a KiwiSaver provider nominated by Mr Sami pursuant to [s.131](#) of the [Employment Relations Act 2000](#).

C. Costs are reserved.

[1] On 24 August 2016, I issued a determination that Laurence Banaba Sami was employed by Optimizer HQ Limited. Costs were reserved.

[2] The respondent was directed to file a copy of the wage and leave records and any evidence about the wage arrears claimed by 3pm 31 August 2016. The

respondent has failed to take any steps or file any records or evidence in respect of the

applicant's claims.

[3] Both parties were directed to file submissions but none were received. This matter now requires determination.

Wage arrears

[4] The failure by the respondent to produce wage and time records as directed has prejudiced the applicant's ability to bring an accurate claim under [s.131](#) of the [Employment Relations Act 2000](#) (the Act).

[5] The applicant has produced evidence in the form of an affirmation from Innokenti Mikhalev, the respondent's former accountant. 1 Mr Mikhalev was familiar with the wage and leave records for Mr Sami. The evidence was that Mr Sami is owed wages and holiday pay of \$104,723.42. The applicant also seeks payment of KiwiSaver entitlements of \$1,316.90.

[6] Given the above, I accept as proved all claims by the applicant employee in respect of the wages paid, and hours, days and times worked.

[7] Accordingly, there is an order that Optimizer HQ Limited is to pay Lawrence

Banaba Sami wage arrears of \$104,723.42 pursuant to [s.131](#) of the Act.

[8] Optimizer HQ Limited is further directed to pay the sum of \$1,316.90 to a

KiwiSaver provider nominated by Mr Sami pursuant to [s.123\(1\)\(c\)\(ii\)](#) of the Act.

Costs

[9] Costs are reserved. If either party seeks an order for costs a memorandum shall be filed and served 14 days from the date of this determination. The other party shall have 14 days to file and serve a reply.

T G Tetitaha

Member of the Employment Relations Authority

1 Affirmation I Mikhalev affirmed 1 July 2016.

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