

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2018] NZERA Auckland 135
3024896

BETWEEN

KARANDEEP SINGH
SANDHU
Applicant

A N D

PADDA CONTRACTING
LIMITED
Respondent

Member of Authority: Nicola Craig

Representatives: The Applicant in person
No appearance for the Respondent

Investigation Meeting: 1 May 2018 at Auckland

Date of Oral
Determination: 1 May 2018

Written Record Issued: 1 May 2018

**ORAL DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

Non-appearance by the respondent

[1] The respondent, Padda Contracting Limited (Padda or the company) failed to file a statement in reply and failed to attend the investigation meeting. I am satisfied that Padda was properly served with the statement of problem and notice of the investigation meeting at its registered office. The Authority received no contact from Padda or anyone on its behalf, despite, in addition to the service referred to, emailing and telephoning Padda's director Sukhpal Singh (Mr Singh).

[2] In those circumstances I proceeded to investigate the matter in the absence of Padda.

Employment Relationship Problem

[3] Karandeep Singh Sandhu (Mr Sandhu) was employed by Padda under an individual employment agreement signed by him and Mr Singh on 15 July 2016. He worked for Padda as an operations co-ordinator. Padda undertakes orcharding services to the kiwifruit industry.

[4] Mr Sandhu claims that he is owed unpaid wages for time when he worked for Padda. Padda's position is unknown due to its lack of contact with the Authority, and lack of response to correspondence from Mr Sandhu's former lawyer.

Investigation Meeting

[5] Mr Sandhu now lives in Christchurch. The Authority permitted him to give evidence and attend the investigation meeting by way of Skype video call, which he did. No other witnesses gave evidence.

[6] Under s 174E of the Employment Relations Act 2000 (the Act) I will not be referring to all the evidence which I heard. I will be making findings in order to dispose of this matter as efficiently as possible.

Wage Arrears

[7] Mr Sandhu's individual employment agreement states that he would be paid \$16.50 gross per hour, with payments to be made weekly into his nominated bank account. The agreement states that a minimum of 40 hours of work per week was required, although the actual hours and days of work may be varied by agreement.

[8] Mr Sandhu says that he worked 40 hours a week or longer. However, he only claims payment for 40 hours per week, given his lack of certainty about the hours he worked. Mr Sandhu was not aware of any system being operated by Padda to record the hours of work of employees.

[9] Time and wage records had been requested in writing in December 2017 by Mr Sandhu's then lawyer, but I am informed that nothing was received in response.

[10] Mr Sandhu was required by his employment agreement to work a minimum of 40 hours per week and I am satisfied that he did so.

[11] In terms of the period of his employment, Mr Sandhu says that he started work around 15 August 2016 once his visa came through and that he worked until the end of October 2016. In the absence of records from Padda, I take this to be a period of 10 weeks.

[12] Mr Sandhu claims that during his employment he was only paid twice. This was \$700, paid into his bank account on 22 August 2016 and \$1000, paid into his account on 14 September 2016.

[13] Mr Sandhu filed his bank statements which show payments of those amounts, referred to as being direct credit from Sukhpal Singh. No other payments referred to as being from Mr Singh or Padda are recorded in the bank statements. Mr Sandhu was not offered any explanation at the time as to why the payments appear to have come from Mr Singh. He did not receive any cash payments for his work.

[14] I am satisfied on the basis of the evidence before me that Mr Sandhu worked for ten weeks, and should have received total gross pay of \$6600.00 but was only paid the total net sum of \$1700.00.

[15] According to the IRD on-line tax calculator Mr Sandhu should have paid \$96.65 in PAYE on the \$660.00 weekly wage, and thus received \$563.35 net per week. The payments received by him equate to three weeks' wages.

[16] I find that Mr Sandhu is owed wages for seven weeks of work, being \$4,620.00 gross as arrears of wages.

Tax issues

[17] Mr Sandhu is also concerned about information given by Padda to the Inland Revenue Department (IRD). He filed his IRD earnings summary which shows gross income which Padda informed IRD that Mr Sandhu earned from it. These were \$1,650.00 gross in August 2016 and \$4,120 gross in September 2016. PAYE was said to have been deducted at \$272.99 and \$756.99 respectively, from the gross amounts.

[18] The hourly rate in the employment agreement was \$16.50 gross. The gross amount which Padda told the IRD it paid Mr Sandhu in August 2016, equates to 100 hours' work. However, the September figure does not easily divide into the \$16.50 hourly rate. It equates to the unlikely figure of 249.69696 hours of work.

[19] I am most concerned that it appears incorrect information was given by Padda to the IRD.

[20] I direct that a copy of this determination is provided to the Inland Revenue Department.

Orders

[21] Within seven (7) days of the date of this determination Padda Contracting Limited is ordered to pay to Mr Sandhu:

- (a) \$4,620.00 gross as arrears of wages; and
- (b) \$71.56 to reimburse Mr Sandhu's filing fee.

Nicola Craig
Member of the Employment Relations Authority