

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2025] NZERA 23
3289319 and 3243779

BETWEEN YALCIN SEVIMAY
Applicant

AND FML ENGINEERING
LIMITED
Respondent

Member of Authority: Rowan Anderson

Representatives: Applicant in person
No appearance for the Respondent

Investigation meeting: 16 January 2025 in Auckland

Date of submissions and other information received: At the investigation meeting and on 17 January 2025

Determination: 17 January 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Yalcin Sevimay was employed by FML Engineering Limited (FML) between 10 January 2022 and 27 December 2022. He claims that he was not paid the relevant notice period and for untaken annual leave upon termination of employment. He also contends that FML agreed to make payment of the relevant sums as a result of mediation that the parties attended.

[2] FML has not meaningfully engaged in the Authority's investigation other than providing a statement in reply to the initial statement of problem broadly asserting a performance issue on the part of Mr Sevimay.

The Authority's investigation

[3] Mr Sevimay initially lodged a statement of problem (matter 3243779) with the Authority on 5 August 2023 seeking payment of wages for a notice period and unpaid annual leave.

[4] The Authority's file in relation to matter 3243779 was administratively closed by the Authority on 2 May 2024. The file was, in error, administratively closed on the basis that the application had been withdrawn. That occurred following advice that the parties had resolved the matter at mediation. A review of the relevant correspondence from Mr Sevimay at the time confirms that Mr Sevimay did not confirm in writing that the matter was withdrawn.

[5] Mr Sevimay lodged a second statement of problem (matter 3289319) on 6 April 2024 seeking compliance with what were said to be the outcomes of mediation.

[6] The Authority held a case management conference (CMC) on 5 September 2024. There was no appearance by FML at the CMC. Mr Sevimay advised that he did not have a signed record of settlement and that when Mediation Services had been approached, he was informed there was not one on record. Having regard to those circumstances, I directed that the parties attend mediation in an attempt to resolve the issues.

[7] At the CMC, it also became apparent that matter 3243779 had not been formally withdrawn. As such, I issued directions notifying that the administrative closure was reversed.

[8] A further CMC was held on 29 October 2024. At the CMC, directions were issued for the provision of witness statements and the timing and location of an investigation meeting was discussed. There was no appearance for FML at the CMC.

[9] Further directions were issued on 29 November 2024 taking into account the rescheduling of mediation that had been previously directed.

[10] I am satisfied that FML were served with all relevant documents and notices. This is confirmed by courier records, including relating to service of documents on 20 May 2024 and 3 December 2024. FML were provided notice of the investigation meeting its location and was also afforded an opportunity to raise any objection to the directions issued.

[11] FML did not participate in the Authority's investigation despite being given notice of the relevant steps being taken, including as to the scheduling of the investigation meeting.

[12] An investigation meeting was held in Auckland on 16 January 2025. Mr Sevimay was the only witness and gave evidence under affirmation. No representative of FML were present at the commencement of the investigation meeting. I delayed the commencement of the investigation meeting for a short period to account for any late arrival. However, there was no attendance for FML and the investigation meeting proceeded in FML's absence.

[13] Mr Sevimay sent a further email to the Authority on 17 January 2025. FML were copied into that email. I do not consider the content of the email determinative of any of the issues, and it does not form the basis for any of my findings.

[14] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Issues

[15] The issues identified for investigation and determination, are:

- (a) Is Mr Sevimay entitled to any arrears of wages, including as to payment of any notice period?
- (b) Is Mr Sevimay entitled to any payment relating to unpaid holiday payments?
- (c) In the alternative, was a binding settlement reached? If so, should any compliance order be made requiring FML to make payment?
- (d) Is FML entitled to any payment arising from claims in its statement in reply?
- (e) Should either party contribute to the costs of representation (if any) of the other party?

Is Mr Sevimay entitled to payment of unpaid wages and annual leave?

[16] Mr Sevimay was employed by FML as a Mechanical Engineer between 10 January 2022 and 27 December 2022. He says that his employment ended by way of

resignation after he was given, in effect, an ultimatum to either resign or be dismissed. He says that he did not, at the direction of FML, work during the notice period.

[17] The proposal that he resign was predicated, as evident from email communications provided to the Authority, on the basis that he would be paid a months' notice and any outstanding annual leave. Mr Sevimay's evidence is that he never received those payments.

[18] Mr Sevimay provided the Authority with a pay record relating to the period 1 September 2022 and 30 September 2022. He says that he did not otherwise receive payslips, but that the pay record is representative of his usual hours of work and pay, albeit that there would be some variation. The gross pay received during the relevant four week period was \$9,583.33 at the rate of \$55.29 per hour for a total of 173.33 hours.

[19] I am satisfied that Mr Sevimay is entitled to payment for the one-month notice period. That is consistent with both the explicit communications between the parties and clause 29 of Mr Sevimay's individual employment agreement. I am satisfied that the appropriate sum owed is \$9,583.33 gross.

[20] I am also satisfied, on the basis of Mr Sevimay's evidence and in the absence of any evidence to the contrary, that Mr Sevimay is entitled to payment of annual leave. Mr Sevimay was entitled to payment for work or notice for the period 10 January 2022 to 27 December 2022. I calculate the relevant period as being 50.6 weeks on the basis that he was paid \$9,583.33 for each four-week period, the total earnings for that period on the information available being \$121,229.13. Mr Sevimay was entitled to payment on termination based on 8 percent of his gross earnings.¹

[21] I am not satisfied, given the absence of any signed record of settlement, that the parties entered into a binding settlement agreement.

FML's statement in reply in matter 3243779

[22] As noted above, FML did not meaningfully engage in the Authority's investigation. However, FML did lodge an initial statement in reply in relation to matter 3243779. That statement in reply sought to take issue with Mr Sevimay's performance

¹ Holidays Act 2003, ss 23 and 27.

of his duties. The matter was not pressed, no evidence in support of that assertion was provided to the Authority, and the claim is dismissed.

Orders

[23] FML Engineering Limited is ordered to make payment to Yalcin Sevimay, within 21 days of this determination, of:

- (a) \$9,583.33 gross on account of wages not paid for the relevant notice period;
- and
- (b) \$9,698.33 gross on account of annual holidays not paid at the termination of employment.

Costs

[24] Mr Sevimay was not represented and there is no issue as to costs.

Rowan Anderson
Member of the Employment Relations Authority