

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2018] NZERA Auckland 61
3023373

BETWEEN FREDERICK SEWELL
 Applicant

AND P4 LIMITED
 Respondent

Member of Authority: Robin Arthur

Representatives: Applicant in person
 Kyle Bryant, director of the Respondent

Conference call: 23 February 2018

Determination: 23 February 2018

DETERMINATION OF THE AUTHORITY

- A. Within seven days of the date of this determination P4 Limited must pay Frederick Sewell the following sums:**
- (i) \$10,324.52 as arrears of wages; and**
 - (ii) \$71.56 in reimbursement of the fee he paid to lodge his application in the Authority.**

Employment Relationship Problem

[1] Frederick Sewell sought an order for P4 Limited (Company number 6212268) to pay him wage arrears. He was employed as a project supervisor under the terms of an employment agreement that came into force on 3 April 2017. The employment came to an end in late November 2017 after Mr Sewell was not successful in having P4 Limited director Kyle Bryant rectify shortfalls in wages due to Mr Sewell.

The Authority's investigation

[2] The Authority made extended efforts to engage P4 Limited in responding to Mr Sewell's claim. His statement of problem was initially sent to the company's address for service as registered with the Companies Office. The address was that of a solicitor at an Auckland law firm. When no statement in reply was received an

Authority Officer contacted the solicitor who advised he had not been able to contact the company “for a substantial period” and had no instructions to act. The Authority then sent further copies of the statement of problem to three further addresses – the company’s registered office at an address care of a chartered accountants’ firm in Putaruru, Mr Bryant’s residential address as a director listed in the Companies Office register, and a further residential address for him in Auckland supplied by Mr Sewell.

[3] The correspondence sent to those addresses included a Member’s Minute that advised that if P4 Limited did not lodge a statement in reply, the company would need leave to respond to Mr Sewell’s application and the Authority could take further steps and make orders without the company’s participation.

[4] Tracked courier records show that correspondence was delivered to the registered office in Putaruru and to the Auckland address at which Mr Bryant was said to reside. Telephone contact with the chartered accountant’s firm in Putaruru today confirmed the correspondence had been received and that firm had made attempts to contact Mr Bryant without success. Delivery to that registered office by New Zealand Post’s courier service was however sufficient notice to the company under the relevant regulations.¹

[5] The Authority made arrangements for a telephone conference today with Mr Sewell and Mr Bryant. The email confirming those arrangements advised that “failure to take part may mean the matter will be dealt with in your absence”. Earlier in the day an Authority Officer spoke by telephone to Mr Bryant, confirming the time he would be contacted. Mr Bryant told that officer he would be available for the call but steps were in place to put the company into liquidation. At the notified conference time Mr Bryant did not answer the call. A conference call with Mr Sewell went ahead in Mr Bryant’s absence. Near the end of that call, around 25 minutes later, a further attempt to telephone Mr Bryant was made but not answered.

Power to proceed

[6] The Authority has the power to proceed if, without good cause shown, any party to a matter before the Authority fails to attend or be represented. In those

¹ Employment Relations Authority Regulations 2000 r 16(3)(b)(iii).

circumstances the Authority may act as fully in the matter as if that party had duly attended or been represented.²

Mr Sewell's evidence

[7] Mr Sewell's statement of problem outlined difficulties he had over a number of months getting paid for his work. His claim sought a detailed accounting of salary payments, allowances, expenses and holiday pay as well as compensation for distress caused by having to pursue arrears of wages while employed.

[8] During some weeks of his employment Mr Sewell was paid by transfers made from another company of which Mr Bryant was a director but his employment, and the obligation to pay any wage arrears, remained with P4 Limited as the company identified as his employer in his employment agreement.

[9] Mr Sewell's evidence included pay slips for amounts he was owed but not paid for his last four weeks' work. Those pay slips were provided to him by a P4 Limited office worker. As a result I was satisfied the amounts identified on those documents were not controversial and an order for their payment could be made despite the lack of attendance or representation from the company. It was not new information and the company had not taken the opportunity to respond to it by lodging a statement in reply within the extended periods provided for it to do so.

Arrears of wages

[10] The pay records provided to Mr Sewell by P4 Limited, for weeks he was not paid, showed he was owed the following gross amounts in arrears:

Pay period ending:	Salary	Materials reimbursement	Accrued Holiday pay	
23 October 2017	\$1,730.77	\$165.50		
5 November 2017	\$1,730.77	\$161.48		
12 November 2017	\$1,730.77	\$82.70		
19 November 2017	\$1,730.77	\$238.68	\$2,753.08	
Subtotals	\$6,923.08	\$648.36	\$2,753.08	
Total due				\$10,324.52

² Employment Relations Act 2000, s 173(2) and Schedule 2 clause 12.

Order for arrears

[11] Under s 131 of the Employment Relations Act 2000 P4 Limited must pay Mr Sewell the sum of \$10,324.52 as arrears of wages within seven days of the date of this determination.

[12] At the time this order was made and this determination issued I checked P4 Limited remained a registered company on the Companies Office register.

Costs

[13] There is no order for costs. P4 Limited must however reimburse Mr Sewell the sum of \$71.56 for the fee he paid to lodge his application in the Authority.

Robin Arthur
Member of the Employment Relations Authority