

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 434
5414639

BETWEEN JAMSHED SHAIKH
 Applicant

A N D RAJ GREWAL t/a INDIAN
 KITCHEN
 Respondent

Member of Authority: James Crichton

Representatives: Applicant in person
 No appearance for Respondent

Investigation Meeting: 23 September 2013 at Auckland

Date of Determination: 23 September 2013

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Jamshed Shaikh) alleges that he is owed wages and holiday pay for a short employment with the respondent (Raj Grewal). Raj Grewal took no part in the Authority's investigation, filed no statement in reply and did not engage either in the Authority's telephone conference with the parties nor with the investigation meeting itself.

[2] Notwithstanding that, the Authority is satisfied that Raj Grewal was aware of the proceeding, was aware of the time and date of the investigation meeting, but simply decided not to engage.

[3] That being the position, the Authority determined to proceed to deal with the matter, concluding that Raj Grewal's absence was deliberate rather than inadvertent.

[4] Jamshed Shaikh told the Authority that he had worked for Raj Grewal previously and that he approached Raj Grewal late in 2012 seeking employment afresh. He was offered employment at the Indian Kitchen in Herne Bay, Auckland and he commenced employment in early November 2012.

[5] Jamshed Shaikh was at pains to emphasise to the Authority that he had no documentation at all from Raj Grewal concerning the employment; in particular, there was no letter of employment, no employment agreement, no payslips, and indeed no other information that there had been any employment relationship at all save for Jamshed Shaikh's bank statements which disclose that payment was made to him from Indian Kitchen Herne Bay. For the avoidance of doubt, the Authority is satisfied with Jamshed Shaikh's evidence that he was employed by Raj Grewal t/a the Indian Kitchen Herne Bay.

[6] Jamshed Shaikh says that he was paid correctly up to 6 January 2013 but for the period from 6 January 2013 down to the effective date of his resignation, being 24 January 2013, he was not paid his wages.

[7] Jamshed Shaikh told the Authority that he was employed on a verbal contract wherein he was paid \$450 a week net, that the hours of work varied somewhat but were usually between 40 and 45 hours per week.

[8] On that basis then, Jamshed Shaikh seeks payment for two weeks and four days in unpaid wages.

[9] Jamshed Shaikh also seeks payment of holiday pay which he says he never received. The Authority asked him specifically whether Raj Grewal had told him that holiday pay was included in the hourly rate but Jamshed Shaikh was adamant that that was not the position. On that basis then, holiday pay is also owing for the total period of the employment

Determination

[10] The Authority is satisfied on the evidence it has before it that Raj Grewal owes Jamshed Shaikh wages for the period from 6 January 2013 to 24 January 2013 and holiday pay for the totality of the employment.

[11] Accordingly, the Authority directs that Raj Grewal is to pay to Jamshed Shaikh the following sums:

- (a) Unpaid wages in the sum of \$1,552.85 gross;
- (b) Unpaid holiday pay in the sum of \$500 gross.

[12] Those payments are to be made by Raj Grewal to Jamshed Shaikh within 14 days of the date of this determination.

[13] A certificate of determination is to issue with this determination.

James Crichton
Member of the Employment Relations Authority