

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2024] NZERA 264  
3273539

BETWEEN SPECIALTY METALS LIMITED  
Applicant

AND TUPU SUISALA  
Respondent

Member of Authority: Helen Doyle

Representatives: Hugh Matthews, counsel for the Applicant  
Tupu Suisala in person

Investigation Meeting: 1 May 2024 in Christchurch

Submissions Received: On the day

Determination: 6 May 2024

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Specialty Metals Limited (Specialty Metals) wants the Authority to resolve an employment relationship problem about the recovery of overpayments of wages to Tupu Suisala. Mr Suisala was employed by Specialty Metals for a period between 1 November 2013 to 31 October 2022.

[2] In July 2022 it was discovered that, due to a software error, overpayments had been made to Mr Suisala in the gross amount of \$9,000.00. The error was brought to Mr Suisala's attention on 21 July 2022 and the error was corrected so that no further overpayments would be made.

[3] It was agreed that Mr Suisala would commence paying the overpaid money back by way of weekly deductions from his wages of \$100.00 per week. The weekly payments were duly deducted from Mr Suisala's wages from on or about 24 July 2022.

[4] On 20 October 2022 Specialty Metals entered into a written agreement (the agreement) with Mr Suisala for repayment over time for the balance of the overpayments. The agreement was signed by both parties.

[5] The agreement provided in the event that Mr Suisala left his employment with Specialty Metals before the overpayment was repaid in full, he agreed to:

1. Repay the balance of the debt in full; *or*
2. Allowing his final wages to be used to offset some or all of the debt owing; *and/or*
3. Continue to make a payment of \$100.00 per week to Specialty Metals Ltd until the debt is paid in full.

[6] Mr Suisala left his employment with Specialty Metals on or about 31 October 2022 and did not maintain the payments of \$100 per week for the debt still outstanding.

[7] The agreement provided in the event that Mr Suisala ceased his repayments (without having repaid the debt) then, Specialty Metals will pursue recovery of the remaining debt. The agreement stated that this may include engaging a debt recovery service or undertaking legal action and if so, any costs incurred from debt recovery would be passed onto Mr Suisala, who agreed to be responsible for these.

[8] A letter of demand for payment was sent to Mr Suisala on 14 March 2023 from Mr Matthews on behalf of Specialty Metals. The letter provided that Specialty Metals would agree to payments continuing at the rate of \$100 per week if they started on or before 1 April 2023 and continued until the debt was paid in full. The letter provided in that event that Specialty Metals would not require the payment of interest or legal costs.

[9] Weekly payments were not made by Mr Suisala.

[10] On 18 January 2024 a statement of problem on behalf of Specialty Metals was lodged with the Authority seeking payment of the balance owing for the overpayment, interest, and costs.

[11] Mr Suisala did not lodge a statement in reply and did not attend a case management conference with the Authority setting the matter down for an investigation meeting. New Zealand Post reports establish proof of service of the statement of problem, notice of direction dated 4 April 2024 and notice of investigation meeting.

### **The investigation process**

[12] Mr Suisala attended the investigation meeting on 1 May 2024. Korina Kirk who is a director of Specialty Metals also attended. Mr Suisala has a positive relationship with Specialty Metals and wanted to discuss payment of the money owing because he did not dispute owing money. There was also discussion of the claims for interest and costs by Specialty Metals.

### **The Issues**

[13] The Authority needs to resolve the following issues:

- (a) What is the balance owed by Mr Suisala to Specialty Metals for the overpayments?
- (b) Should the Authority exercise its discretion in schedule 2 clause 11 of the Employment Relations Act 2000 (the Act) and award interest as claimed by Specialty Metals?
- (c) Should costs be awarded and, if so, in what sum?
- (d) Should an order be made that the total sum awarded be payable by instalments of \$100 per week?

### **What is the balance owed by Mr Suisala to Specialty Metals for the over payments?**

[14] The Authority has been provided with Specialty Metals record for the overpayments and a schedule of repayments made.

[15] I am satisfied that the balance owing for the overpayments is \$6,374.47.

**Should the Authority exercise its discretion in Schedule 2 clause 11 of the Act and award interest as claimed by Specialty Metals?**

[16] In advance of the Authority investigation meeting Mr Matthews provided a schedule in accordance with the Interest on Money Claims Act 2016 using the Ministry of Justice Civil Debt Interest Calculator.

[17] Interest was calculated on the basis of \$100 instalments commencing one week after Mr Suisala had left employment. This took into account the offer made to pay on this basis although payment did not occur. The interest claimed is \$312.32.

[18] There has been a considerable period where no payment has been made. The Authority is satisfied that it should order inclusion of interest in the amount of \$6,374.47 and that Mr Matthews' calculations are correct and are reasonable.

**Should costs be awarded and in what sum?**

[19] The amount claimed for costs by Specialty Metals is \$1,796.55 in accordance with the agreement that costs incurred from debt recovery would be passed on to Mr Suisala who agreed to be responsible for these.

[20] The Authority has its own costs procedures and has a tariff-based approach.

[21] The amount claimed for costs by Specialty Metals is not at a level that could be said to be inconsistent with the tariff-based approach. It is an appropriate claim for costs and disbursements in all the circumstances.

**Should an order be made that the total sum awarded be payable by instalments of \$100 per week?**

[22] Mr Suisala offered to make payments of the amount owing at the rate of \$100 per week by way of automatic payment from his wages commencing the week of 13 May 2024.

[23] Payment by instalments of \$100 per week was satisfactory to Specialty Metals.

[24] An order can be made for payment by instalments.

## **Orders made**

[25] Tupa Suisala is ordered to pay to Specialty Metals Limited the following amounts:

- (a) The amount of \$6374.47 being the balance owing for overpayments made.
- (b) The sum of \$312.32 being interest.
- (c) The sum of \$1,796.55 for costs and disbursements.
- (d) The total sum due and owing is \$8,483.34.

[26] By agreement payment of the amount of \$8,483.34 can be made by instalments in the sum of \$100 per week by way of automatic payment from Mr Suisala's wages.

[27] Failure to pay a weekly instalment of \$100 will result in the balance becoming due and owing.

Helen Doyle  
Member of the Employment Relations Authority