

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 51/09  
5142869

BETWEEN                      HARRY TE TUHI  
   Applicant

AND                              JONATHAN REGINALD  
   WANOA T/A WIKITANGA  
   TRANSPORT  
   Respondent

Member of Authority:      G J Wood

Representatives:            Mark Nutsford for Applicant  
   Mia King for Respondent

Investigation Meeting:     11 February 2009 at Auckland

Determination:              16 February 2009

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**DETERMINATION OF THE AUTHORITY ON APPLICATIONS TO  
RESPOND OUT OF TIME AND FOR AN ADJOURNMENT**

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[1]      Mr Te Tuhi claims that he was underpaid and unjustifiably dismissed by Mr Wanoa. Mr Te Tuhi's representative, Mr Mark Nutsford, raised a personal grievance on his behalf against Mr Wanoa, very properly informing him that the grievance was out of time, and asking his consent to the late raising of the grievance.

[2]      In a telephone call, after receiving no response, Mr Nutsford was told by Mr Wanoa that he would provide a written response promptly.

[3]      Mr Nutsford next had to file a claim in the Authority, after not receiving the promised response from Mr Wanoa.

[4] The statement of problem was served on Mr Wanoa and no statement in reply was received by the Authority. Mr Wanoa did not attend, nor was he represented, at the investigation meeting. The Authority was unable to contact Mr Wanoa at the commencement of the investigation meeting, but was able to contact his life and business partner, Ms Mia King.

[5] Ms King confirmed that she was authorised to act on Mr Wanoa's behalf. She informed the Authority that she had provided a comprehensive statement in reply, but had heard nothing further from the Authority since sending it on 14 November 2008.

[6] Ms King further stated and she and Mr Wanoa had moved house in late November and that of the two communications sent by the Authority subsequently, one had been signed for by a neighbour and the other by a "Cory", who she did not know. I accept that it is quite possible that the said "Cory" was the NZ Post courier meant to deliver the letter.

[7] Ms King was able to email the Authority, within 20 minutes, a copy of her statement in reply (comprising two closely typed pages), which satisfied me that it had been prepared on the date claimed. It contained substantive defences, if proved, to many of Mr Te Tuhi's claims.

[8] Ms King stated that Mr Wanoa wanted the opportunity to defend the substance of Mr Te Tuhi's allegations. In relation to consent to Mr Te Tuhi raising his personal grievance out of time Ms King clearly consented thereto on Mr Wanoa's behalf.

[9] I granted leave for Mr Wanoa to respond accordingly, by way of a statement in reply dated 14 November 2008 and adjourned the investigation into this matter for a later directions conference between the parties, in order to set the investigation meeting date and to set a timetable.

[10] Matters under investigation will be:

- Unjustified dismissal;
- Underpayment of wages;
- Unpaid sick leave; and
- Unpaid holiday pay.

**G J Wood**  
**Member of the Employment Relations Authority**