

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2014] NZERA Christchurch 79  
5446786

BETWEEN                      STEPHEN TROW  
   Applicant  
  
AND                                HALEY CONSTRUCTION  
   LIMITED  
   Respondent

Member of Authority:        M B Loftus  
  
Representatives:              Stephen Trow, on his own behalf assisted by Alan Alty  
   Simon Haley for the Respondent  
  
Investigation Meeting:        13 May 2014 at Christchurch  
  
Submissions Received:        At the investigation meeting  
  
Determination:                13 May 2014

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     Mr Trow seeks money he claims he is owed by Haley Construction Limited (Haley's) in respect to unpaid wages and holiday pay.

**Citation of the Respondent**

[2]     The claim, as initially filed, cites the respondent as *Simon Haley, Haley Construction*. Haley Construction Limited is a company of which Mr Haley is the sole director and shareholder. The parties agree the company was the employer and the citation is amended by agreement.

**Determination**

[3]     Mr Trow was employed by Haley's as a carpenter. He commenced on 1 July 2013 and left Haley's employ on 14 October 2013 in what both parties indicate were

confused and possibly acrimonious circumstances. Terms and conditions were discussed prior to employment but not in any great detail. The parties had not, by the time of departure, got around to concluding a written employment agreement.

[4] Mr Trow says he was due to be paid for the fortnight ending 13 October 2013 along with payment for work performed before his departure on the 14<sup>th</sup>. Orally he said he worked two hours on the 14<sup>th</sup> but his written record, forwarded to Haley's in support of his claim, records an hour and a half and that is what Mr Trow originally sought. It is therefore appropriate to use an hour and a half.

[5] Mr Trow says he was never paid for the final fortnight despite subsequent requests.

[6] Mr Trow says he worked a forty four hour week and was paid \$24 dollars per hour. He did, however, take a day off on 4 October and has not claimed that day. He calculates he is owed \$1,956. To that is added holiday pay which is a further \$156.48.

[7] Mr Haley agrees the hourly rate was \$24 but says that included a non-taxable allowance of 75 cents. The pay sheets produced by Mr Trow support that.

[8] Mr Haley accepts Mr Trow was engaged to work 44 hours a week but cannot confirm whether or not he did during the fortnight in question. He also accepts Mr Trow performed some work on the final day.

[9] Most importantly Mr Haley accepts Mr Trow has not, as claimed, been paid for work performed on or after 30 September 2013. He also accepts this means it is unlikely the holiday payment Haley's subsequently made included that period.

[10] Haley's puts the failure to pay down to its view Mr Trow abandoned his employment and a belief it could withhold payment in such circumstances. That is simply not the case in the absence of a written employment agreement with a valid forfeiture clause (section 5 of the Wages Protection Act 1983).

[11] There is then Haley's desire to confirm with Mr Trow's supervisor he worked the days claimed. That is not an opportunity I can allow given section 132 of the Employment Relations Act 2000. It provides where there is a failure to keep or produce time and wage records I may accept the claim unless the respondent can prove it is incorrect. Haley's has not produced any records of its own and Mr Haley's

numerous concessions means the company has fallen a long way short of establishing Mr Trow's claim lacks validity.

[12] Having considered these factors I conclude Mr Trow is owed the amount he claims.

[13] Mr Trow has been successful. He is therefore entitled to a contribution towards the cost of pursuing his claim. There is no legal representation and recoverable costs are limited to the Authority's filing fee of \$71.56. I believe it appropriate Mr Trow be recompensed accordingly and will order reimbursement of the fee in addition to the claimed amount.

### **Orders**

[14] For reasons outlined above, I order Haley Construction Limited pay Mr Stephen Trow the sum of \$2,184.04 (two thousand, one hundred and eighty four dollars and four cents) gross in respect to unpaid wages, unpaid holiday pay and costs.

[15] PAYE is to be deducted on \$2,051.36 of that amount and forwarded to Inland Revenue.

[16] The residue is to be paid, in full, to Mr Trow within 14 days of this determination.

MB Loftus  
Member of the Employment Relations Authority