

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2021] NZERA 373
3134717

BETWEEN ‘AISEA TONGI
Applicant

AND 42 CONSTRUCTION
LIMITED
Respondent

Member of Authority: Robin Arthur

Representatives: Applicant in person
No attendance by the Respondent

Investigation Meeting: On the papers and by case management conference on
24 August 2021

Determination: 25 August 2021

DETERMINATION OF THE AUTHORITY

- A. Within 28 days of the date of this determination 42 Construction Limited must pay ‘Aisea Tongi \$2,070.50, with interest on that sum from 29 September 2020 to the date of payment.**
- B. 42 Construction Limited must also, within 28 days, reimburse Mr Tongi \$71.56 for the fee paid to lodge his application in the Authority.**

Employment Relationship Problem

[1] By statement of problem lodged in the Authority on 26 March 2021 ‘Aisea Tongi sought an order requiring 42 Construction Ltd to pay outstanding wages for work he did in September 2020.

[2] 42 Construction Ltd did not lodge a statement in reply to Mr Tongi’s claim. A copy of his statement of problem was sent by post to its registered office, addressed to

its current director and sole shareholder Helakalaitesi Filimoehala. Courier records show this was delivered to and signed for at the address. Although service at the registered office is sufficient notice, the Authority also took further steps to advise the company by sending the documents to an email address used by its former co-shareholder Watson or Uatesoni Filimoehala.¹ Telephone messages were also left for Mr Watson Filimoehala. He is the person with whom Mr Tongi said he communicated during the time he worked for 42 Construction Ltd.

[3] Documents provided by Mr Tongi showed he had earlier tried to solve his wage arrears issue through direct correspondence with Mr Filimoehala and with the assistance of the Employment Mediation Services early resolution process. Mr Filimoehala had initially agreed to participate in that process but did not do so.

[4] 42 Construction Ltd was given an opportunity to participate in a case management conference by telephone, notified to its registered office and to the email address and telephone number referred to earlier. The information sent to the company advised that the Authority could go ahead in the absence of a party and could proceed to make enforceable orders.²

[5] No-one representing the company attended or joined the conference call at the appointed time of 3pm on 24 August 2021. Mr Filimoehala telephoned an Authority Officer that evening in response to a message left when an attempt was made to contact him at the beginning of the conference call. He said he was not involved in the company.

[6] In the absence of any response or representation from 42 Construction Ltd, despite the opportunity to participate and provide information, the Authority has proceeded to determine this matter on the basis of the information available from Mr Tongi's statement of problem and documents he attached to it. The documents included text and email messages he exchanged with Mr Filimoehala and Mr Tongi's bank statements.

¹ Employment Relations Authority Regulations s 17(1)(b).

² Employment Relations Act 2000, s 173(2), s 174D and Schedule 2 clause 12.

The wages due to Mr Tongi

[7] On 16 October 2020 Mr Tongi sent Mr Filimoehala a letter he had prepared with the assistance of the Waitakere Community Law Centre. The letter set out Mr Tongi's account of his work for the company, attempts to be paid his agreed wages and an agreement reached with Mr Filimoehala on 29 September 2020 that Mr Tongi was owed the gross amount of \$2,770.50.

[8] Mr Tongi's bank account records show the company paid him \$700 on 16 October 2020. By email to Mr Tongi sent that day Mr Filimoehala said he had paid Mr Tongi \$700 but would reply to his letter "soon" as he did not agree with some of the claims made in the letter. Mr Tongi said no further payments were made and Mr Filimoehala has not communicated with him since.

[9] In the absence of any response or contrary information from 42 Construction Limited, Mr Tongi's claim for arrears of wages is accepted. As arrears due under s 131 of the Employment Relations Act 2000 (the Act) the company must pay Mr Tongi the sum of \$2,070.50.

[10] Because Mr Tongi has been denied use of that money due to him since at least 29 September 2020, he should also be paid interest on that amount from then until the date payment is made.³ Interest must be calculated and paid using the Civil Debt Interest Calculator.⁴

[11] Mr Tongi is also entitled to have 42 Construction Ltd reimburse him for the expense of 71.56 he incurred for the fee paid to lodge his application in the Authority.

No grievance raised

[12] Mr Tongi's letter of 16 October 2020 referred to "formal avenues" that were open to him if the wages issue was not resolved, including pursuing a personal grievance. The letter said he reserved his rights in that regard but there was nothing to indicate he had proceeded at a later point to raise such a grievance. Accordingly there was no established basis to award what his application described as "further compensation" for disadvantaging him by not paying money due to him.

³ Employment Relations Act 2000, Schedule 2 clause 11 and Interest on Money Claims Act 2016.

⁴ www.justice.govt.nz/fines/civil-debt-interest-calculator.

Orders

[13] Within 28 days of the date of this determination 42 Construction Ltd must pay the following amounts to Mr Tongi:

- (a) \$2,070.50 as wage arrears;
- (b) Interest on the sum of \$2,070.50 to be calculated using the Civil Debt Interest Calculator for the period from 29 September 2020 until the date of payment; and
- (c) \$71.56 in reimbursement of the fee paid to lodge his application in the Authority.

Certificate of determination

[14] A Certificate of determination is to be issued with this determination. In the event that 42 Construction Limited did not pay the sums ordered in this determination, the certificate of determination may be filed in any District Court. The order to which the certificate relates is then enforceable in the same manner as an order made by a District Court.⁵

Robin Arthur
Member of the Employment Relations Authority

⁵ Employment Relations Act 2000 s 141(1) and Employment Relations Authority Regulations 2000 r 26.