

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 343
3232599

BETWEEN

CARLOS GONZALEZ
TORRES
Applicant

AND

TENNIS PLUS LIMITED
Respondent

Member of Authority: Andrew Gane

Representatives: Karen Tamayo for the Applicant
Trudie von Huben for the Respondent

Investigation Meeting: 20 March and 17 May 2024 via AVL

Submissions and further information received: 24 April 2024 from the Respondent

Determination: 11 June 2024

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Carlos Torres was employed by Tennis Plus Limited (TPL) as a tennis coach on 1 November 2022. Mr Torres's employment with TPL terminated on 9 April 2023. Mr Torres raised claims against TPL for failure to correctly pay his wages. As a result of TPL's alleged failures Mr Torres has sought arrears and interest on those claims from TPL.

[2] TPL lodged a statement of reply with the Authority denying Mr Torres's claims and alleging TPL overpaid Mr Torres.

The Authority's investigation

[3] For the Authority's investigation written witness statements and supporting documents were lodged by Mr Torres and TPL director Trudie von Huben. During my investigation I heard evidence from Mr Torres and Ms von Huben, who answered questions under affirmation from me.

[4] Both parties lodged written submissions and further information subsequent to investigation meeting. I briefly reconvened the investigation meeting to discuss the parties closing submissions.

[5] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

The issues

[6] The issues requiring investigation and determination are:

- (a) Was Mr Torres owed any wage arrears at the end of his employment?
- (b) If so should TPL be ordered to pay any outstanding arrears to Mr Torres?
- (c) If so should TPL be ordered to pay interest on such arrears; and
- (d) Should either party contribute to the costs of representation of the other party?

Background

[7] Mr Torres signed an employment agreement with TPL and commenced work on 1 November 2022. The employment agreement set out his hours of work as a minimum of 40 hours a week at an annual salary of \$57,750. Mr Torres was also subject to a 90 day trial period.

Termination of employment

[8] On 6 December 2022 TPL was informed that the contract work for a substantial client would not be renewed from January 2023. TPL met with Mr Torres and informed him of the loss of the business contract and advised him that this would have an adverse effect on the business and his employment. TPL agreed to keep employing Mr Torres to assist his visa situation. TPL also agreed to pay Mr Torres some leave in advance.

[9] In March 2023 Mr Torres was granted residency and met with Ms von Huben to discuss his ongoing employment with TPL. During this meeting Mr Torres asked for an increase in salary. Ms von Huben told him that TPL could not afford a salary increase. Mr Torres and Ms von Huben continued to discuss ongoing employment options. An agreement was reached where TPL would not enforce its restraint of trade provisions of his employment agreement and Mr Torres was free to take up employment elsewhere without restraint.

[10] On 27 March 2023 Mr Torres resigned from his employment with TPL. He also requested a copy of his wage and time records as he was unsure whether his salary and holiday pay entitlements had been correctly calculated.

[11] TPL failed to provide Mr Torres a copy of his wage and time record and this was cause for some concern and frustration to Mr Torres.

[12] TPL was obliged upon request by Mr Torres to immediately provide him with access to or a copy of or an extract from any part or all of the wages and time records relating to this employment.¹ Mr Torres stated that he had made repeated requests for wage and time records, but TPL had failed to provide him with any. This lack of documentation made it difficult for him to assess whether he was properly paid for the hours he worked. It should be noted that Torres did not make a claim for a penalty against TPL for this failure.

[13] TPL has admitted it failed to provide Mr Torres a copy of his wage and time records. Ms von Huben stated this was a result of her misunderstanding employment advice she received regarding the provision of payslips and the keeping of wage and time records. This issue was remedied when I directed TPL to provide a copy of the wage and time records to Mr Torres. TPL has now complied with my direction and provided Mr Torres a copy of his wage and time records

¹ Employment Relations Act 2000, s130 (2).

Wage Arrears

Racket services policy

[14] While Mr Torres was employed by TPL, TPL had a racket services policy. This allowed Mr Torres to provide restringing services to TPL clients. He was entitled to keep the proceeds he received for providing these services.

[15] A dispute arose between Mr Torres and TPL as to payment for the restringing services. Mr Torres was given the opportunity to provide a restringing service at a college where he was coaching. Mr Torres alleged that TPL owed him money for providing restringing services at the college. TPL denied owing Mr Torres any money for restringing services.

[16] The restringing provision in the employment agreement is quite clear that the financial arrangement was between Mr Torres and the client and did not involve TPL. TPL did not request any fee for this benefit.

Racket services policy

The employee is granted the opportunity to provide re-string services (but not racket sales) at Saint Kentigern College. The employee may keep the full payment received for those services. Pricing of services must be agreed with the employee prior to fees being quoted to clients.

[17] I do not find that TPL owed Mr Torres any money for restringing services.

Was Mr Torres owed any wage arrears at the end of his employment?

[18] TPL engaged a payroll specialist to assist in drafting the wage and time records. TPL acknowledged it had underpaid Mr Torres by \$2,106.55. I have reviewed the wage and time records and agree with the amount outstanding.

[19] Mr Torres is owed \$2,106.55 in wage arrears.

Interest

[20] Mr Torres can recover interest on his contractual entitlements as set out in paragraph [19] above, from 9 April 2023 until 11 June 2024 (the date of determination). If the amount ordered is not paid by TPL, interest will continue to accrue. The order for

payment of interest is made under clause 11(1) of Schedule 2 of the Act. Interest is to be calculated by using the Civil Debt Interest Calculator.²

[21] The interest calculated on the amount set out in paragraph [19] above is \$139.28.

Orders

[22] Mr Torres's claims for wage arrears has been upheld. Within 14 days of this of determination Tennis Plus Limited is ordered to pay Carlos Torres the following sums:

- (a) Wage arrears of \$2,106.55 (gross).
- (b) Interest as awarded in paragraph [21] above of \$139.28.

Costs

[23] Costs are reserved.

[24] If Mr Torres seeks costs he may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of this determination. From the date of service of that memorandum TPL will then have 14 days to lodge any reply memorandum.

[25] If the Authority is asked to determine costs, the parties can expect the Authority to apply its usual daily rate unless particular circumstances or factors require an upward or downward adjustment of that tariff.³

Andrew Gane
Member of the Employment Relations Authority

² <http://www.justice.govt.nz/fines/civil-debt-interest-calculator>

³ For further information about the factors considered in assessing costs, see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.