

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 298
3000631

BETWEEN

ENAYET UDDIN
Applicant

A N D

HD SECURITY SERVICES
LIMITED
Respondent

Member of Authority: T G Tetitaha

Representatives: Applicant in person
No appearance by Respondent

Investigation Meeting: by telephone on 26 September 2017

Submissions Received: 26 September 2017 from Applicant
No submissions from Respondent

Oral Determination: 26 September 2017

Written Record: 27 September 2017

ORAL DETERMINATION OF THE AUTHORITY

- A. I order HD Security Services Limited to pay Enayet Uddin the sum of \$540.00 gross unpaid wages.**
- B. Enayet Uddin was unjustifiably disadvantaged in his employment by the respondent's actions of failing to provide the uniform he had paid for and the aggressive behaviour of its manager Sean Michaels.**
- C. I order HD Security Services Limited to pay Enayet Uddin the sum of \$2,250 being compensation for hurt and humiliation pursuant to s.123(c)(i) and s.124 of the Employment Relations Act 2000.**

D. I direct HD Security Services Limited to pay a penalty of \$1,000 into the bank account of the Employment Relations Authority. That sum is then to be paid out to Enayet Uddin.

E. I order HD Security Services Limited to pay Enayet Uddin the sum of \$71.56 as a contribution towards his costs.

Employment relationship problem

[1] Enayet Uddin alleges he was unjustifiably disadvantaged by the actions of a respondent manager, Sean Michaels.

Relevant Facts

[2] Mr Uddin was employed as a Security Officer by HD Security Services Limited. The company provides security services around Auckland. No employment agreement was signed. An offer of employment was made to Mr Uddin by email from Mr Michaels on behalf of the respondent company. The offer of employment included payment at \$20.00 per hour with no fixed hours, working as and when required.

[3] Mr Uddin was also asked to pay \$250 for a uniform which he was allowed to keep. Mr Uddin paid the \$250.

[4] Mr Uddin worked approximately 25 hours between 18 November and 6 December 2016. He was told by Mr Michaels that if the client was happy he would be offered a job as Operations Manager. He understood the client had given good feedback to Mr Michaels.

[5] Mr Uddin then tried to meet with Mr Michaels several times to discuss the Operations Manager position. Mr Michaels kept cancelling the appointments and refused to divulge the location of the company's office. Instead he emailed Mr Uddin an offer of employment from Kelly Stone, Director of Operations, a blank employment agreement for the Operations Manager position, and asked him to sign and return it by email. Mr Uddin was initially reluctant to do so. This was because he had never been given a uniform, despite paying for it, and he was also owed wages for his work to date.

[6] Mr Michaels told Mr Uddin to contact Kelly Stone, a respondent director at the time. He was told Kelly Stone was the company accountant. Mr Uddin attended Ms Stone's place of residence on 2 December 2016. She gave him a cheque for \$366.00 and a payslip. After banking the cheque it was subsequently dishonoured. Mr Uddin stopped working from 6 December 2016.

[7] Mr Uddin then engaged in a series of text messages with Mr Michaels seeking payment. Initially he was told to "check your bloody account tomorrow morning". When Mr Uddin was still not paid and advised he wished to take further legal action, Mr Michaels then became more aggressive. His texting started calling Mr Uddin "fuck ass" and telling him to "fuck off". He also made specific comments about Mr Uddin's ethnicity such as:

See you in court. Go back to your fuck up country asshole.

Thank God I didn't take you to meet my main clients. No wonder Bangladesh is fucked up with people like you.

[8] Mr Uddin, to his credit, did not react to any of these text messages. However this did nothing to dissuade Mr Michael's responses. Even when he told Mr Michaels by email that he intended filing proceedings against the respondent, Mr Michaels replied:

To be clear, I'm not trying to stop you from laying a complaint to employment authorities. Please do. I'm not scared of those fuckwits. Show them this text.

[9] Mr Uddin was understandably unhappy with those responses. He filed a Statement of Problem in the Authority in January 2017. The statement of problem referred to raising a personal grievance for the above actions and sought unpaid wages, compensation for the payment of his uniform he never received, compensation for hurt and humiliation, lost wages, and holiday pay. He also sought payment of a penalty of \$1,000.

Non-appearance of respondent

[10] There were difficulties in serving the respondent company at its registered address for service. Mr Uddin was directed to serve the proceedings personally, which he did so. He served a respondent director Kelly Stone personally on 11 February 2017 and filed a statutory declaration to that effect.

[11] I noted today that Ms Stone was removed as a director on 15 September 2017. I expect she would have taken steps to alert any replacement director of this proceeding. A copy of this determination is to be couriered to the respondent company's address for service at the Companies Office and to the address of the new sole director.

[12] The respondent has taken no steps in this matter. There is no good cause shown why I should not proceed to determine this matter today. I intend to do so.

Wages

[13] I am satisfied Mr Uddin is owed wages. These comprise payment for 25 hours work at \$20.00 per hour (\$500 gross wages) and 8% holiday pay thereon of \$40.00. There is no evidence he worked on public holidays.

[14] Therefore I order HD Security Services Limited to pay Enayet Uddin the sum of \$540.00 unpaid wages.

Personal grievance

[15] I am satisfied Mr Uddin has properly raised with the employer a grievance of unjustified disadvantage through his statement of problem. He has not raised his dismissal in the statement of problem, although he would have been able to do so.

[16] The personal grievance alleges there were unjustified actions by the respondent employer:

- (a) Requiring payment of \$250 for a uniform that was never provided; and
- (b) Allowing Sean Michaels to act in an aggressive manner towards Mr Uddin when he sought payment, including swearing, racial comments and general aggressive behaviour, as shown in the above text messaging.

[17] Having considered the evidence I am satisfied that Mr Uddin has proven the above actions occurred. These were in breach of the express terms (provision of a uniform) and implied terms (safe workplace free from bullying) of his employment

agreement. None of the actions meet the tests set out in s103A of the Employment Relations Act 2000. The actions were not minor and caused Mr Uddin unfairness.

[18] Enayet Uddin was unjustifiably disadvantaged in his employment by the respondent's actions of failing to provide the uniform he had paid for and the aggressive behaviour of its manager Sean Michaels.

Remedies for personal grievances

[19] Given Mr Uddin has proven he has a personal grievance he is entitled to seek lost remuneration and compensation. Because this is a personal grievance of unjustified disadvantage there can be no lost wages other than the wages he has been awarded above. He has not returned to work for the respondent since 6 December 2016. Therefore, no other lost wages can be recovered.

[20] Mr Uddin seeks compensation for hurt and humiliation of \$2,000. Given the proven behaviour of the respondent manager, I am satisfied it is more than appropriate to award that amount. Mr Uddin gave evidence of his hurt and humiliation upon receipt of the text messages. He has also suffered actual losses by the non-provision of the uniform.

[21] I make no reduction for contributory conduct. Mr Uddin from the evidence I heard has behaved admirably at all times in seeking to resolve his employment dispute.

[22] Therefore I order HD Security Services Limited to pay Enayet Uddin the sum of \$2,250 being compensation for hurt and humiliation pursuant to s.123(c)(i) and s.124 of the Employment Relations Act 2000.

Penalty – breach of good faith

[23] Mr Uddin also seeks a penalty for breaches of good faith by the same conduct. He states the conduct was both misleading and deceptive. I accept this. He felt the respondent was messing him around, making promises it wouldn't keep and avoiding its obligations by unnecessarily aggressive behaviour. After he filed proceedings the respondent cut off all contact and did not offer any further work.

[24] There is evidence in the emails and text messaging that this behaviour was deliberate, serious and sustained towards Mr Uddin. The behaviour certainly falls within the type that should be marked by the award of a penalty.

[25] Mr Uddin seeks a penalty of \$1,000. This is appropriate given the egregious behaviour within a short duration of his employment.

[26] I also direct payment of that penalty to Mr Uddin given this is a private matter between parties. It is not one that requires that penalty to be paid to the Crown.

[27] I direct HD Security Services Limited to pay a penalty of \$1,000 into the bank account of the Employment Relations Authority. That sum is then to be paid out to Enayet Uddin.

Costs

[28] Mr Uddin also seeks to recover a contribution to his costs of the filing fee of \$71.56. That seems appropriate. Accordingly, I order HD Security Services Limited to pay Enayet Uddin the sum of \$71.56 as a contribution towards his costs.

T G Tetitaha
Member of the Employment Relations Authority