

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Wallace Corporation Limited (Applicant)

AND Vaughan Williams (Respondent)

REPRESENTATIVES Prue Dawson, Counsel for Applicant
No appearance for respondent

MEMBER OF AUTHORITY Janet Scott

INVESTIGATION MEETING 13 April 2006

DATE OF DETERMINATION 18 April 2006

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

The applicant in this matter seeks to recover an overpayment of wages from the respondent worker.

There was no appearance at the investigation meeting by or on behalf of the respondent. I am satisfied the respondent has been served with the Statement of Problem and Notice of Investigation Meeting.

The meeting was delayed to allow for the situation that the respondent had been unavoidably detained. However, as there was neither an appearance for nor contact from the respondent to explain his absence I have proceeded to hear and determine the matter in accordance with Clause 12 of the Second Schedule of the Employment Relations Act 2000.

Background

The applicant employer in this matter operates a Tannery in Waitoa. Mr Williams commenced employment as a factory worker in the tannery on 21 July 2004. At the time of the events in question Mr Williams' employment was subject to an Individual Employment Agreement (IEA) dated 19 January 2005. His hourly rate of pay was \$13.

In March 2005, an administrator for the company made an error in recording Mr Williams' hourly rate for the purposes of the calculation of his pay for the week ending 20 March 2005. Instead of entering the hourly rate as \$13 per hour it was entered as \$201.08 per hour. This resulted in a significant overpayment to Mr Wallace (\$3,619.79). The error was only discovered when another employee reported to management that Mr Williams had been bragging about the overpayment.

On 20 April Mr Turley, Factory Manager for the applicant, took the matter up with Mr Williams. Mr Williams acknowledged the overpayment and agreement was reached that he would repay the monies overpaid at the rate of \$75 per week from his wages. Mr Williams signed an authority to permit the deductions to be made.

However, before the first payment had been made pursuant to the authority to deduct, Mr Williams abandoned his employment. When his final pay was made up and paid out a deduction of \$75 was made from his final pay.

The applicant and its counsel have made efforts to meet with Mr Williams to come to an agreement to allow for repayment of the outstanding sum over time. The applicant has failed to keep appointments made and has failed to respond to telephone messages.

The applicant also failed to respond to efforts to set this matter down for a mediation hearing where the problem could be resolved by agreement between the parties in a low level and cost efficient manner.

The respondent now seeks an order from the Authority directing the respondent to repay to it the outstanding sum of the overpayment i.e. \$3,542.79

Discussion

The Authority has the jurisdiction to deal with overpayment claims (s.161 Employment Relations Act).

The applicant did file a Statement in Reply to which I have had regard. He impliedly accepts there was an overpayment but denies he is now liable to repay it. Otherwise his Statement in Reply is unintelligible and raises issues that are not within the scope of the employment relationship problem as defined by the Statement of Problem.

I am entirely satisfied that there was an overpayment of wages made to Mr Williams. The overpayment was a mistake. Mr Williams acknowledged the mistaken overpayment. The employer had regard to Mr Williams' ability to pay in reaching an arrangement with him to recover the overpayment. Mr Williams signed the required authority to have the overpayment deducted by instalment from his wages. However, Mr Williams left his employment and has failed to come to another arrangement with the respondent to repay the sum owing.

I am satisfied an order directing the respondent to pay the sum owed to the respondent is warranted.

Determination

The respondent Mr Williams is directed to pay to the applicant, Wallace Corporation Ltd the sum of \$3,542.79 net to reimburse it for the overpayment of wages made to him for the week ending 20 March 2005.

Costs

The applicant has incurred costs in bringing this matter to the Authority. I am satisfied that in all the circumstances (given that Mr Williams has rebuffed the both the reasonable steps taken by the applicant to resolve this issue and the steps of the Mediation Service to facilitate a settlement at little or no cost to the parties) Mr Williams should now bear some responsibility for the costs incurred by the respondent in pursuing the matter.

The applicant has engaged counsel. While the hearing was relatively short I am satisfied that the costs incurred in filing, preparation of the respondent's brief and attendance at the investigation meeting were costs reasonably incurred (\$1,867.67). The respondent should make a reasonable contribution to those costs.

I therefore direct the respondent, Mr Williams, to pay to the applicant the sum of \$500 net to reimburse it for costs incurred.

Summary of Orders

The respondent Mr Williams is directed to pay to the applicant, Wallace Corporation Ltd the sum of \$3,542.79 net to reimburse it for the overpayment of wages made to him for the week ending 20 March 2005.

The respondent, Mr Williams, is directed to pay to the applicant, Wallace Corporation Ltd the sum of \$500 net to reimburse it for costs incurred.

Janet Scott
Member of Employment Relations Authority