

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2019] NZERA 479
3064692

BETWEEN JASON WON
 Applicant

AND BUILDERLAB & CO. LIMITED
 Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in person
 Namlee Kim for Respondent

Investigation Meeting: 15 August 2019 at Auckland

Written Record of Oral 16 August 2019
Determination Issued:

ORAL DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On 24 May 2019 the Authority ordered Builderlab & Co. Limited (Builderlab) to pay Jason Won:¹

- (a) Wage arrears of \$84,750;
- (b) Interest on his wage arrears to run from 22 June 2019, and to be calculated using the Interest on Money Claims Act 2016 online calculator;
- (c) Via deducting and remitting to IRD, the correct PAYE deductions from his gross wages/salary; and
- (d) \$71.56 to reimburse his filing fee.

¹ [2019] NZERA Auckland 308.

[2] Builderlab and Jason Won entered into a payment arrangement, with some reluctance from Mr Won, which involved a first payment of \$2,000 being made on 10 July 2019 and then half of the remaining balance being paid on 24 July 2019 with the remainder of the outstanding balance paid in full to Mr Won on 7 August 2019.

[3] Mr Won was concerned at the time he agreed to this arrangement that Builderlab would not pay the amount it owed him, but he felt he had no option but to accept the payment schedule that it had proposed.

[4] Builderlab paid the first \$2,000 payment on 10 July 2019 but has not paid any of the other two payments since then.

[5] Mr Namlee Kim, who is the son of Builderlab's sole director and shareholder (Byeongin Kim), told the Authority that Builderlab intended to honour the Authority's determination and apologised that had not yet occurred. He said that Builderlab was not trading and did not have the money at the moment to pay Mr Won but was trying to get the money to do so.

[6] Mr Won has applied for a compliance order ordering Builderlab to pay him the remaining money he is owed and the outstanding interest on that amount together with the filing fee he has incurred for this compliance order application.

[7] Builderlab did not file a Statement in Reply, it has not provided any financial evidence to the Authority to support Mr Kim's statement that Builderlab currently does not have the money to be able to pay Mr Won the amounts he was awarded, or regarding its assets or ability to borrow to pay Mr Won what he is owed.

[8] The Authority has no financial information at all before it, despite having directed Builderlab to set out its financial position in full by 7 August 2019.

[9] The Authority has noted Builderlab's repeating pattern of telling Mr Won that he would be paid, giving him a date that would happen, and then not paying him.

[10] The Authority was concerned that delaying the issuing of a compliance order was likely to enable that repeating pattern to continue. This compliance order application has therefore been determined based on the information that is currently available to the Authority.

What is Mr Won still owed?

[11] The Authority is satisfied that Mr Won is still owed at least \$82,821.56. That amount consists of the \$84,821.56 he was awarded in paragraph [19] of the substantive determination for \$84,750 in wage arrears plus reimbursement of his \$71.56 filing fee, less the \$2,000 that Builderlab paid him on 10 July 2019.²

[12] The Authority notes that the outstanding amount of \$82,821.56 referred to above does not include the interest Mr Won was awarded on his wage arrears, so the outstanding interest he was awarded also needs to be added to the total amount Builderlab currently owes Mr Won.

Interest owed

[13] Although the amount of interest due to Mr Won as at the date of the Authority's compliance order investigation meeting was not provided to the Authority, the parties are able to calculate that amount, which increases each day, using the Ministry of Justice online calculator set up under the Interest on Money Claims Act 2016.

[14] The Authority records that two separate interest calculations need to be made to determine how much interest Mr Won is owed, as the total interest amount increases each day his wage arrears remain unpaid:

- (a) The first is interest on the full amount of outstanding wages of \$84,750 to run for the period 22 June – 10 July 2019; and
- (b) The second is to take account of the \$2,000 arrears that was paid on 10 June 2019, so the interest is then to be calculated on the new reduced amount outstanding of \$82,750 from 10 July 2019 until the full amount of wage arrears he was awarded has been paid to him.

Compliance order

[15] The Authority is satisfied that Builderlab has failed to comply with the orders made by the Authority in its substantive determination dated 24 May 2019 and that it is unlikely to do so unless a compliance order is issued.

² Above n1.

[16] Accordingly, the Authority orders Builderlab, by no later than 13 September 2019, to comply with paragraph [19] of its substantive determination dated 24 May 2019 by paying Mr Won all of the amounts he was awarded, namely:³

- (a) \$84,750 gross wage arrears;
- (b) Interest on the amounts outstanding in accordance with the award of interest in paragraph [20] of the 24 May 2019 determination;
- (c) \$71.56 reimbursement of his filing fee.

[17] Builderlab is also ordered to deduct and remit to the Inland Revenue Department (IRD) the correct PAYE that Mr Won was required to pay on the his total gross salary of \$90,000, because apparently no PAYE or other legally required deductions have been remitted to IRD by Builderlab on Mr Won's behalf.

[18] Mr Won told the Authority that the PAYE owing on a salary of \$90,000 should amount to \$26,306.16, according to his calculations using an Inland Revenue Department (IRD) online PAYE calculator.

[19] If that PAYE calculation is correct, then Builderlab should have paid Mr Won wages of \$63,693.84 net. However it has only paid him wages of \$7,250 gross to date, consisting of \$5,250 paid to him while he was employed and \$2,000 paid to him on 10 June 2019, after the Authority had issued its 24 May 2019 determination.

[20] The Authority notes that it is up to Builderlab to check the specific amount of PAYE it is legally required to deduct and remit to IRD from Mr Won's wages, to ensure that the correct tax and other deductions have been made and paid to IRD.

[21] As an example, the ACC levy would also need to be deducted and remitted to IRD from Mr Won's wages and the figures he gave the Authority at its investigation meeting do not appear to have accounted for that. That levy is an example of an IRD deduction Builderlab as Mr Won's employer was responsible for complying with to ensure it had met all of its IRD obligation regarding Mr Won's employment.

[22] The timeframe for Builderlab to comply with the Authority's substantive determination dated 24 May 2019 is by no later than 13 September 2019.⁴

³ Above n1.

[23] That means that Mr Won has to be paid the full amount he was awarded (wage arrears, interest on his wage arrears, correct PAYE deductions remitted to IRD, and reimbursement of his first filing fee) by no later than 13 September 2019.

[24] Mr Won represented himself so there is no issue as to costs. He is however entitled to recover his filing fee of \$71.56 for this matter. Builderlab is therefore ordered to pay that amount, in addition to the amounts awarded above, within twenty-eight days of the date of this determination.

Warning

[25] The Authority notes that failure to comply with this compliance order may result in Mr Won applying to the Employment Court for a further compliance order, in which case the Employment Court may under s 140(6) of the Employment Relations Act 2000 order a sentence of imprisonment not exceeding three months, a fine and/or that Builderlab's property be sequestered.

Orders

[26] By no later than 13 September 2019 Builderlab is ordered to pay Mr Won \$71.56 to reimburse his filing fee for this compliance order application.

[27] By no later than 13 September 2019, Builderlab is ordered to comply with the Authority's determination dated 24 May 2019.⁵ Compliance requires it to:

- (i) Pay Mr Won the wage arrears he was awarded in paragraph [19]a of the 24 May 2019 determination, less the \$2,000 it paid him on 10 July 2019;
- (ii) Pay IRD all PAYE deductions that were legally required to have been made from Mr Won's wages, as per paragraph [19]b of the 24 May 2019 determination;
- (iii) Pay Mr Won interest on the wages arrears he was awarded, as per the interest awarded in paragraph [20] of the 24 May 2019 determination;

⁴ Above n1.

⁵ Above n1.

- (iv) Pay Mr Won the \$71.56 it was ordered to reimburse his filing fee as per paragraph [19]c of the 24 May 2019 determination.

Rachel Larmer
Member of the Employment Relations Authority