

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 162

5454912

BETWEEN PHILIP WONG
Applicant
AND URBAN CAFÉ LIMITED
Respondent

Member of Authority: Eleanor Robinson
Representatives: Applicant in person
Johno Evans, Representative for Respondent
Investigation Meeting: On the papers
Submissions received: 13 May 2015 from Applicant
1 June 2015 from Respondent
Determination: 9 June 2015

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Mr Philip Wong, claims that he is owed wages for the fortnight ending 27 September 2013 by the Respondent, Urban Café Limited (UCL).

[2] UCL denies that it owes Mr Wong any monies in respect of unpaid wages, and claims that Mr Wong has received all the monies to which he was entitled during the time he was employed.

Issues

[3] The issue for determination is whether or not Mr Wong was paid all the monies to which he was entitled for the fortnight ending 27 September 2013.

Note

[4] The parties agreed to the Authority determining this issue ‘on the papers’ based on the Statements of Problem and in Reply and on the written submissions from the parties.

[5] Further information was sought from the Respondent on 5 June and 9 June 2015, but no response was received. I have therefore proceeded on the basis of the information which has been received from the parties.

Background Facts

[6] Mr Wong commenced employment at UCL in August 2013, and was employed until on or about the end of November 2013. During his employment he was remunerated at the rate of \$14.50 per hour, and was paid fortnightly by means of a direct payment transfer to his bank account.

[7] Mr Wong stated that he had received a payslip detailing his gross pay and relevant deductions for the fortnight ending 27 September 2013, which confirmed that he was entitled to a nett payment of \$659.07. However there was no corresponding deposit from UCL received into his bank account.

[8] Mr Wong stated that he had raised this issue with UCL, but had not received a response. He had then raised the matter with a Ministry of Economic Development (MBIE) Standards Officer who had raised the matter on his behalf with UCL.

[9] As this approach had been unsuccessful, Mr Wong said he had requested mediation, but this had not resolved the issue and he has still not received payment.

[10] Mr Evans stated that UCL believed that Mr Wong had been paid for the fortnight ended 27 September 2013.

Determination

[11] Both parties have filed supporting documentation. Mr Wong has filed copies of his bank statements relating to the period commencing 30 August 2013 and ending 30 November 2013. He has also filed payslips provided to him by UCL for the corresponding periods which were generated by the ACE payroll system used by UCL.

[12] UCL has filed ACE payroll records showing payments to all employees for the periods ending 16 October 2013 and 13 November 2013. No other payroll records were filed by UCL.

[13] According to the payslips provided by UCL to Mr Wong he should have received the following payments:

- \$659.07 nett for the fortnightly period ending 27 September 2013 to be paid on 2 October 2013
- \$506.77 nett for the fortnightly period ending 11 October 2013 to be paid on 16 October 2013
- \$338.66 nett for the fortnightly period ending 25 October 2013 to be paid on 30 October 2013
- \$166.02 nett for the fortnightly period ending 8 November 2011 to be paid on 13 November 2013

[14] The bank account details filed by Mr Wong confirm the following amounts were received into his bank account:

- \$646.87 on 19 September 2013
- \$506.77 on 16 October 2013
- \$338.66 on 5 November 2011
- \$166.02 on 13 November 2013

[15] The ACE payroll details provided by UCL indicate that Mr Wong was paid \$506.77 nett on 16 October 2013 for the fortnightly period ending 11 October 2013; and that Mr Wong was paid \$166.02 nett on 13 November 2013 for the fortnightly period ending 8 November 2013.

[16] The indication on the payslips provided to Mr Wong of the date when the payments would be made to him does not correspond to the dates when the payments were received by Mr Wong's bank.

[17] However, I find that the amount of wages to be paid to Mr Wong set out on the payslip advices provided to Mr Wong for the fortnightly periods ending 11 October 2013, 25 October 2013, and 8 November 2013 correspond to payments received into his bank account on 16 October 2013, 5 November 2013 and 13 November 2013.

[18] The payslip advice provided to Mr Wong for the period ended 27 September 2013 indicates that the amount of \$659.07 nett should have been paid into his bank account on 2 October 2013.

[19] Mr Wong has supplied bank account statements commencing on 30 August 2013 and covering the period to 30 November 2013.

[20] There is a payment from UCL into Mr Wong's bank account of \$506.77 received on 19 October 2013 for which there is no corresponding pay advice, but which the ACE payroll details provided by UCL indicate was in respect of the fortnight ending 11 October 2013.

[21] There is no payment into Mr Wong's bank account from UCL during the period 20 September 2013 until 16 October 2013 in the amount of \$659.07 as indicated on the payslip provided to him for the fortnightly period ended 27 September 2013.

[22] Even allowing for some slippage between the date when it was indicated to be paid by UCL, which appears from the payslip information to be 5 days following the relevant fortnight ending, there is no payment from UCL during the period from 19 September 2013 until 16 October 2013, which payment correlates to the fortnightly period ending 11 October 2013.

[23] Based on all the information provided, I find that Mr Wong was not paid the amount of \$659.07 by UCL for the fortnightly period ending 27 September 2013.

[24] UCL is ordered to pay Mr Wong the sum of \$659.07 nett in respect of unpaid wages for the fortnightly period ending 27 September 2013.

[25] UCL is also to reimburse Mr Wong the filing fee of \$71.56.

Costs

[26] While costs are reserved, I note here that, subject to his submissions, Mr Wong was not legally represented and, unless he incurred legal costs, it is therefore unlikely he have grounds to claim a contribution to any fair and reasonable costs.

Eleanor Robinson
Member of the Employment Relations Authority