

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 133/09  
5273653

BETWEEN                      RODERICK EWEN  
   BRANAGAN AND SETHA  
   NARAYANA DAVENPORT  
   Applicants

AND                                THE WAIRARAPA  
   GROWING COMPANY  
   LIMITED  
   Respondent

Member of Authority:        P R Stapp

Representatives:             Roderick Branagan and Setha Davenport Applicants  
   Colin Walker for Respondent

Investigation Meeting:      By telephone conference 17 September 2009

Determination:                17 September 2009

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     The applicants have claimed unpaid wages and holiday pay and expenses. The company accepts that it owes both applicants unpaid wages and holiday pay and expenses.

**Issues**

[2]     How much is each of the applicants owed for wages and holiday pay? How much is owed to the applicants for expenses?

**Background**

[3] The employment relationship problem has not been to mediation. I have considered mediation as I must under s 159 of the Act. I decided that it would not be constructive to direct the matter to mediation. My reasons are that the company has accepted that money is owed to the applicants, the company has had proposals made by the applicants to pay by different arrangements without any result, there is some prospect of a liquidator being appointed and the company has not been trading since May 2009. There was no agreement reached on any payments being made and the company has left the matter to any liquidator to disburse any funds for wages. Mediation will only involve more costs that may not be able to be recovered.

**The facts**

[4] The applicants have not been paid wages and holiday pay by their employer: The Wairarapa Growing Company Limited. Documents of wages and holiday pay records have been produced for Mr Branagan. Ms Davenport has not received any document winding up her wages and holiday pay and redundancy despite it being promised. Mr Walker has given a commitment to ensure that Ms Davenport receives her details. In the meantime she has estimated her final balance and holiday pay. The company has faced financial difficulties including redundancies taking place on 29 March 2009. This was due to the closure of the Greytown fresh shop and warehouse, difficulties with sales and there being no change to a deteriorated cash flow situation.

[5] Arrangements made between the applicants and the company for payments to be made by instalment have not been continued because of the company ceasing to trade.

[6] The record shows that Mr Branagan is owed \$5,374.46 nett of tax.

[7] Ms Davenport estimates that she is owed \$6,644.03 outstanding wages and \$1,500 holiday pay, both nett of tax. I am satisfied that she has done her best to accurately estimate her final pay and holiday pay. I accept her calculation.

[8] Mr Walker accepted that the applicants are owed the above sums.

[9] Mr Branagan informed me that his estimate of the amount of expenses for running costs incurred while he worked for the company was \$2,000 from the statement of problem. Ms Davenport says her estimate on expenses incurred while she was working for the company is \$1,400. The estimates have been made by the applicants because they have not been provided with the details held by the company despite their requests for the details.

[10] Mr Walker accepted that there were sums owing for expenses and that the sums seemed about right.

[11] Mr Walker informed me that the company is likely to go into liquidation and has not traded since May 2009. There has been no confirmation of an appointment of a liquidator and the company's record of registration shows no change of status. Therefore, until such time as the company goes into liquidation the sums claimed are owed by the company.

[12] The applicants have spent \$70 filing the application in the Authority to obtain their lawfully payable wages and holiday pay. They should not be out of pocket to achieve this.

### **Determination**

[13] The Wairarapa Growing Company Limited owes Roderick Ewen Branagan the total sum of \$5,374.46 nett of tax and owes Setha Narayana Davenport the total sum of \$8,144.03 nett of tax for wages and holiday pay.

[14] The Wairarapa Growing Company Limited owes Roderick Branagan \$2,000 expenses for running costs incurred while he worked for the company.

[15] The Wairarapa Growing Company Limited owes Setha Davenport \$1,400 expenses for running costs incurred while she worked for the company.

[16] The above sums have not been paid.

[17] In addition the Wairarapa Growing Company Limited is required to pay the applicants jointly and severally the \$70 filing fee for putting them to the unnecessary expense of needing to apply for this determination.

[18] If payments are not made the applicants can enforce this determination under s141 of the Act by obtaining a certificate of determination from the Employment Relations Authority's support officer and filing with District Court.

[19] The applicants recognise that the company has had difficulties and that there will be difficulties in enforcing this determination. They have been given sound advice about using mediation to try and work out some compromise with the company however their suggestions have not been replied to by the respondent, which wants to rely on a liquidator. Mediation is always an option that is available but requires the good will of the respondent to participate and use the best endeavours to resolve the problem. I take that matter no further.

### **Summary of orders**

[20] The Wairarapa Growing Company Limited is ordered to pay Roderick Ewen Branagan the total sum of \$5,374.46 wages and holiday pay nett of tax and \$1,500 expenses.

[21] The Wairarapa Growing Company Limited is ordered to pay Setha Narayana Davenport the total sum of \$8,144.03 wages and holiday pay nett of tax and \$1,400 expenses.

[22] The Wairarapa Growing Company Limited is ordered to pay Roderick Branagan and Setha Davenport jointly and severally the \$70 filing fee.

**Leave granted**

[23] Leave has been granted for the parties to return to the Authority on any recalculation of the above sums for any order that is required.

P R Stapp  
Member of the Authority