

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 4
5363147

BETWEEN

SAMUEL BARTHOLOMEW,
JADE PEAT, JOHN MCKAY,
TONGA WHYTE, JUANITA
WARREN, XINGWEI
(CLARK) ZHANG, ISAAC
BAHN, KAYLA
RANGIHAEATA, KYLE
BAHN, ALEX AH-SIU,
CARLA SHAW, MANILA
LESATELE JNR, ASHLEIGH
SHARE, ALINA OGG

Applicants

AND

BNJ SPORTS COMPANY
LIMITED t/as HARBOUR
FITNESS

Respondent

Member of Authority: R A Monaghan
Representatives: S Bartholomew, advocate for applicants
No appearance by respondent
Investigation Meeting: 23 December 2011
Determination: 9 January 2012

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Samuel Bartholomew and the 13 other applicants named above say their former employer BNJ Sports Company Limited owes them unpaid wages and holiday pay.

[2] BNJ Sports Company Limited did not lodge a statement in reply and has not participated in the investigation

Service of documents on the respondent

[3] The Authority was unable to effect service on BNJ Sports Company Limited at its registered office or its address for service. Under regulation 16 of the Employment Relations Authority Regulations 2000 the Authority directed service on the company's sole director and shareholder, Bing Xu, by Mr Bartholomew on behalf of all of the applicants.

[4] When Mr Bartholomew was unable to effect service on Mr Xu, he sought an order for substituted service on Mr Xu's mother. The order was granted. I am satisfied that service of the statement of problem, information about the requirements associated with a statement in reply, the order for substituted service and the notice of investigation meeting was effected on Mr Xu's mother.

Failure of respondent to attend or be represented

[5] BNJ Sports Company Limited did not attend and was not represented at the investigation meeting.

[6] For the reasons set out above I am satisfied that it had notice of the application and the date of the investigation meeting. It has not shown good cause for its failure to attend or be represented.

[7] I have therefore proceeded under clause 12 Schedule 2 of the Employment Relations Act 2000 to act as fully as if BNJ Sports Limited had attended or been represented.

John McKay

[8] One of the applicants, John McKay, provided specialist services to BNJ Sports Company Limited, for which he was paid on the production of invoices. He was engaged by the company as a contractor.

[9] Since the Employment Relations Authority has jurisdiction in respect of employees' claims, but not those of contractors, I cannot take Dr McKay's claim any further.

Orders for payment

1. Background

[10] Mr Bartholomew and his colleagues were employed at a fitness centre operated by BNJ Sports Company Limited. On or about 6 November 2011 the owner of the premises where they worked changed the locks, and advised that another company had taken over the lease. From 7 November 2011 that company has operated the fitness centre, and it became the employer of its staff.

[11] Mr Bartholomew and his colleagues have had no further contact with Mr Xu or BNJ Sports Company Limited. All of them received a payment of wages in respect of the week ending 30 October 2011, but with the exceptions of Alex Ah-Siu and Carla Shaw they did not receive wages and in some cases commissions owed in respect of the week ending 6 November 2011. Their employment terminated on that date, and they did not receive final payments of holiday pay.

[12] In addition, Juanita Warren did not receive payments of wages owed for the weeks ending 11 September 2011 and 18 September 2011.

2. Orders

[13] I am satisfied the payments are owed.

[14] BNJ Sports Company Limited is ordered to make the following payments:

- a. to Samuel Bartholomew:
 - . \$3,434.40 as holiday pay and \$784 as unpaid wages

- b. to Jade Peat:
 - . \$1,123.36 as holiday pay and \$245 as unpaid wages

- c. to Tonga Whyte:
 - . \$4,352.77 as holiday pay and \$697 as unpaid wages

- d. to Juanita Warren:
 - . \$3,240.38 as holiday pay and \$2,184.90 as unpaid wages

- e. to Xingwei (Clark) Zhang:
 - . \$1,635.82 as holiday pay and \$640 as unpaid wages

- f. to Isaac Bahn:
 - . \$2,382.70 as holiday pay and \$970 as unpaid wages

- g. to Kayla Rangihaeata:
 - . \$1,143 as holiday pay and \$307.50 as unpaid wages

- h. to Kyle Bahn:
 - . \$3,856.24 as holiday pay and \$640 as unpaid wages

- i. to Alex Ah-Siu:
 - . \$2,183.40 as holiday pay

- j. to Carla Shaw:
 - . \$302.61 as holiday pay

- k. to Manila Lesatele Jnr:
 - . \$1,968.17 as holiday pay and \$384 as unpaid wages

- l. to Ashleigh Share:
 - . \$325.74 as holiday pay and \$211.25 as unpaid wages

- m. to Alina Ogg:
 - . \$2055.90 as holiday pay and \$271.75 as unpaid wages

[15] All of the above figures are stated as gross amounts.

Costs

[16] BNJ is further ordered to reimburse the applicants for the filing fee of \$71.56.

R A Monaghan

Member of the Employment Relations Authority