

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2012] NZERA Auckland 146
5361987
5371213

BETWEEN

SATISHWAR PRASAD
VISHWAR NARAYAN
Applicants 5361986

RAJESH KANT
Applicant 5371213

AND

SUPREME BUILDERS &
DEVELOPERS (NZ) LIMITED
Respondent

Member of Authority: R A Monaghan
Representatives: Applicants in person
A Kashyap, counsel for respondent
Investigation Meeting: 3 April 2012
Determination: 1 May 2012

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Satishwar Prasad, Vishwar Narayan and Rajesh Kant say their former employer, Supreme Builders and Developers (NZ) Limited (BDNZL) owes them unpaid wages and holiday pay. All claims have been heard together.

[2] Mr Prasad says he is owed payment for 380.5 hours not paid, plus 2 weeks' holiday pay. The relevant hourly rate of pay is \$15.

[3] Mr Narayan says he is owed payment for 461.5 hours not paid, plus 2 weeks' holiday pay. The relevant hourly rate of pay is \$17.50

[4] Mr Kant says he is owed payment for 546.5 hours not paid, less a payment of \$1,600 nett which he received. The relevant hourly rate of pay is \$13.

[5] Mahendra Singh, the director and shareholder of SBDNZL, accepted that the time claimed had been worked and not paid for. He did not pursue certain accusations which had not been made the subject of a counterclaim, so that the remaining issue concerned the correct rate of pay. I have determined that matter with reference to the written employment agreements into which the parties entered for the purposes of the respective employment relationships, as distinguished from other documents into which the parties entered for immigration purposes.

[6] Mr Singh asserted further that the company had no money and could not pay. There followed a discussion during the investigation meeting about the possibility of orders for payments by instalment under s 131(1A) of the Employment Relations Act 2000. The section reads:

The Authority may order payment of the wages or other money to the employee by instalments, but only if the financial position of the employer requires it.

[7] Mr Singh did not provide any evidence in support of the assertion regarding ability to pay. The investigation was adjourned for three weeks to allow the production of such evidence. None has been produced. There will be no order under s 131(1A).

Summary of orders

[8] SBDNZL is ordered to pay:

- (a) To Mr Prasad,
\$5,505.50 as unpaid wages and \$1,200 as unpaid holiday pay;
and
- (b) To Mr Narayan
\$8,076.25 as unpaid wages and \$1,400 as unpaid holiday pay;
and
- (c) To Mr Kant
\$7,104.50, less \$1,600 (nett) deducted from the nett

equivalent of this amount, as unpaid wages.

[9] Except as specified, all figures are gross figures.

[10] I further order that interest be paid on the above sums calculated at 5% from the date of this determination to the date of payment.

[11] These amounts are due and payable immediately.

Costs

[12] SBDNZL is further ordered to reimburse Mr Kant for the filing fee of \$71.56.

[13] SBDNZL is further ordered to reimburse Messrs Prasad and Narayan for their filing fee of \$71.56.

R A Monaghan

Member of the Employment Relations Authority