

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 278
5355907

BETWEEN DINO GABRIEL D'ISLA
 Applicant

AND JOHNSON NOMINEES (NO 6)
 LIMITED TRADING AS THE
 MUDDY FARMER
 Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in Person
 No appearance by Respondent

Investigation Meeting: 13 August 2012

Determination: 13 August 2012

DETERMINATION OF THE AUTHORITY

- A Johnson Nominees (No 6) Limited trading as the Muddy Farmer is ordered to pay Mr D'Isla within 28 days:**
- (i) \$1,680 wage arrears; and**
 - (ii) \$71.56 to reimburse his filing fee.**

Mediation

[1] The Authority referred the parties to mediation. Mediation was scheduled for 06 December 2011 but Johnson Nominees did not attend. The Authority is advised that it did not provide Mediation Services with a reason for its non attendance.

[2] Mr D'Isla further says that the respondent has not responded to his numerous attempts to recover his unpaid wages.

Employment Relationship Problem

[3] Mr Dino D'Isla was employed by Johnson Nominees as a chef to work at the Muddy Farmer. He claims he is owed wage arrears because he was not paid for the period 19-28 July 2011. Mr D'Isla says he worked 8 hours per day at the rate of \$21.00 gross per hour for these ten days so should have been paid \$1,680 for the work he did over that period. He says he has not been paid anything.

[4] Mr D'Isla says he was usually rostered to work five days per week with two days off per week which varied each week depending on the roster. However, he believes he worked every day over the period 19 to 28 July 2011 because he had to cover the hours that another chef who had left would have normally worked.

[5] Mr D'Isla was required to sign in and sign out when he started and finished work but he has not been provided with these records so his wage arrears claim is based on his memory only. He said it has been difficult for him to recall his exact work hours from more than a year ago.

[6] Mr D'Isla says he always started at 6.30am and would work at least 8 hours per day. He normally finished work at 2.30pm but if required he would work longer and so finish later than usual. His late finishes would vary with the needs of the business. Mr D'Isla says he did not get a proper lunch break but if it was quiet he would be allowed to eat something whilst remaining at his work station so he could attend to any orders that came in.

[7] Mr D'Isla thinks he probably worked more than 8 hours a day for at least some of the days over the period 19-28 June 2011 but because he does not have access to his wage and time records he cannot be sure of the days or times he finished late. He has therefore only claimed wage arrears for a normal 8 hour day for that period.

[8] Mr D'Isla says his last pay on 23 June 2011 covered the period 13-18 June 2011 and he has not been paid since then.

Failure of respondent to defend claim

[9] Johnson Nominees has not filed a Statement in Reply. Nor has it sought leave to defend this matter.

[10] I am satisfied Johnson Nominees was aware of these proceedings and of the Authority's investigation meeting today because the Second Amended Statement of Problem and the Notice of Hearing were served on it within the required timeframe by a process server who has provided the Authority with an affidavit of service.

Information respondent provided to the Authority

[11] By letter dated 28 September 2011 Mr Gary Ashley, who identified himself in his sign off as a *Consultant*, wrote to the Authority about Mr D'Isla's employment relationship problem. This letter was received on 03 October 2011 and it stated:

We will calculate pay as we see it and advise, Dino walked out on us and put the company under stress in the kitchen reluctantly, we will pay what is due on our side at so much per week into his bank account.

We will advise the amounts after we have calculated it.

[12] This correspondence supports Mr D'Isla's claim that money was owed to him for unpaid wages.

[13] Mr D'Isla says he has not been provided with any calculations about what he is owed and he has not received any payment since his last pay on 23 June 2011.

Outcome

[14] I am satisfied on the balance of probabilities and in the absence of any evidence to the contrary that Mr D'Isla worked 8 hours per day for the period 19 to 28

June 2011 and that he has not been paid for doing so. His wage arrears claim has therefore been established on the balance of probabilities.

[15] Accordingly, Johnson Nominees is ordered to pay Mr D'Isla within 28 days:

- a. \$1,680 wage arrears;
- b. \$71.56 to reimburse his filing fee.

Rachel Larmer
Member of the Employment Relations Authority