

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2015] NZERA Wellington 59
5464972

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| BETWEEN | TALONALEAVA IVA First Applicant |
| | LAUANA TEO Second Applicant |
| AND | MENE T CONSULTING AGENCY LIMITED Respondent |

Member of Authority: Michele Ryan

Representatives: Jessica Sebastian, Counsel for Applicants
No appearance for or on behalf of for Respondent

Investigation Meeting: 9 June 2015 at Wellington

Determination: 15 June 2015

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicants, Mr Talonaleava Iva and Mr Lauana Teo, lodged a statement of problem with the Authority on 5 December 2014. Each of the applicants alleges he is owed wages by previous employer, Mene T Consulting Agency Limited (Mene Consulting).

The Authority's investigation

[2] Mene Consulting did not provide a statement in reply. On 3 February 2015 and again on 18 February 2015 the Authority's support staff attempted to call Mr Mene Toso, sole director of Mene Consulting, but those calls went unanswered. Nor was Mene Consulting represented in a previously notified and scheduled case management call held on 31 March 2015.

[3] Despite a 'Notice of an Investigation Meeting' delivered to the registered offices of Mene Consulting on 9 April 2015 no-one on its behalf attended the Authority's investigation meeting on 9 June 2015.

[4] Mene Consulting has not engaged with the Authority at all with respect to the applicants' claims.

[5] No good cause has been shown as to why Mene Consulting (or its representative) did not appear at the Authority's investigation meeting and pursuant to clause 12 of Schedule of the Employment Relations Act 2000 (the Act), I proceeded with an investigation as if Mene Consulting had duly attended or been represented.

Background

[6] Mr Iva and Mr Teo each signed an individual employment agreement with Mene Consulting on 17 January 2014 with a view to engaging in the Christchurch rebuild. They began work in Christchurch on 27 January 2014. Employment with Mene Consulting lasted just under 7 weeks and the applicants both returned to their respective homes in Porirua on 15 March 2014. They say this was because they were paid sporadically and either underpaid or not paid at all.

The claims

[7] The applicants' written employment agreements reflect respectively that Mr Iva's was to be paid \$32 per hour, and Mr Teo at the rate of \$20 per hour. Mr Iva reports that there was a verbal agreement with Mene Consulting that any overtime would be paid at time and a half.

[8] Mr Iva says he worked a total of 256.75 hours at ordinary time and 38.5 hours at the overtime rate. He says he was entitled to wages of \$10,042.40 but was paid \$5,040.00 in total (including PAYE). He says he is owed \$5,040.00 (gross), plus \$803.39 in holiday pay, and \$238.80 when he was underpaid compared to the payslips he received.

[9] Mr Teo says he worked a total of 219.75 hours at ordinary time and 48.08 hours at time and a half. He advises that he is owed \$3,591.39. This sum consists of: \$2,372.40 as the difference between the hours worked and hours paid; \$752.00 as the

total shortfall between the sums he received and the amount recorded in two payslips; and \$466.99 in holiday pay.

Determination

Are wages owed?

[10] Section 130 of the Act requires all employers to keep wage and time records. Section 132 of the Act states that where any claim is brought before the Authority for the recovery of wages (or other money payable to the employee), in the absence of clear records, the Authority may, unless the employer proves the claims are incorrect, accept the claims as proved.

[11] No wage and time records were produced by Mene Consulting despite a direction dated 1 April 2015 to do so. Nor did it supply information to prove that the applicants' claims are incorrect.

[12] Copies of timesheets and diary entries were furnished to support the hours each applicant claimed he worked. In addition, their solicitor provided helpful spreadsheets consolidating the information contained in the separate records. I have no reason not to accept the information provided.

Was Mene Consulting able to withhold wages or make deductions from the applicants' pay?

[13] There is a suggestion from correspondence dated 2 April 2014 and provided to the Authority by the applicants, that outstanding wages have been withheld by Mene Consulting on grounds that the applicants purportedly owe monies for the cost of travel to Christchurch and for tools that have been allegedly gone missing. The applicants each deny that tools have been lost. They further say that it was agreed when they commenced employment that travel costs were to be met by Mene Consulting.

[14] On the information provided I am unwilling to accept that Mene Consulting is justified in its failure to pay wages. Section 4 of the Wages Protection Act states:

No deductions from wages except in accordance with Act

Subject to sections 5(1) and 6(2), an employer shall, when any wages become payable to a worker, pay the entire amount of those wages to that worker without deduction.

[15] I find Mene Consulting has not complied with its obligations at s.4 Wages Protection Act to pay the applicants their wages as they became due.

[16] There is also some evidence that Mene Consulting made deductions from each of the three wage payments made to Mr Iva and from one of the wage payments due to Mr Teo. The evidence is that Mene Consulting made a personal loan to Mr Iva although it was unclear what the arrangements were as regards repayment. With respect to Mr Teo he says he borrowed money from Mr Toso to purchase food in circumstances where there was a delay in the payment of his wages. Again it was unclear what arrangements were made for repayment.

[17] There are only very limited circumstances in which an employer entitled to deduct wages from an employee. Relevant to the applicants claims s.5 of the Wages Protection Act states:

Deductions with worker's consent

(1) *An employer may, for any lawful purpose, -*

- (a) *with the written consent of a worker; or*
- (b) *on the written request of a worker –*

make deductions from wages payable to that worker.

[18] I have no evidence that either of the applicants gave written consent to have his wages deducted. I find that Mene Consulting has made unlawful deductions from both of the applicants' wages in breach of s.5(1).

Summary of determination

[19] I accept the Applicants' claims. Mene T Consulting Agency Limited is required to reimburse the sum equal to wages owed to the applicants as set out at para. [23] and [24] of this determination.

Costs

[20] The principle that costs should follow the event is applicable to this matter. The applicants seek \$600 as a contribution to their costs plus \$171.56 for disbursements of \$100 and the cost of the filing fee that accompanied the application to the Authority.

[21] The applicants were supported by a solicitor from Whitireia Community Law Centre Trust Inc. There was evidence that the preparation of the applicants' case was overseen by an external experienced employment law advocate. Costs associated with that supervision were itemised in an invoice¹. I find those costs were modest and reasonable, as is the request for the respondent to contribute to costs.

Orders

[22] I note each of the applicants provided a calculated total sum of what he regards is owed. Having viewed the relevant payslips there is a portion of monies which I find is owed to each of the applicants (the shortfall payments) which appears to have already been subject to PAYE. I have separated those sums from the arrears of wages sum as further PAYE should not be attached to those sums.

[23] Mene T Consulting Agency Limited is ordered to pay Mr Talonaleava Iva the following:

- (a) **\$5,805.79** (gross) for arrears of wages and holiday pay²; and
- (b) **\$238.80** (nett) for the shortfall in wages corresponding with one timesheet which appears to have already been subject to PAYE.

[24] Mene T Consulting Agency Limited is ordered to pay Mr Lauana Teo the following:

- (a) **\$2739.39** (gross) for arrears of wages and holiday pay³; and
- (b) **\$752.00** (nett) for the shortfall in wages corresponding with two payslips which appear to have already been subject to PAYE.

[25] Mene T Consulting Agency Ltd is also ordered to pay a total sum of **\$771.56** as a contribution to the applicants' costs.

Michele Ryan
Member of the Employment Relations Authority

¹ \$800 (including GST)

² Comprising \$5,002.79 in unpaid wages and \$803.39 in holiday pay

³ Comprising \$2,372.40 in unpaid wages and \$466.99 in holiday pay