

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2016] NZERA Auckland 89
5591182**

BETWEEN

DENNIS KAPRALOV
First Applicant
NIKKI COOK
Second Applicant

AND

PAUANUI BAKERY & PIZZA
LIMITED
Respondent

Member of Authority: Eleanor Robinson

Representatives: Applicants in person
No appearance for Respondent

Investigation Meeting: 21 March 2016

Submissions received: 24 November 2015 from the Applicant
None from Respondent

Date of Oral Determination: 21 March 2016

Date of Written
Determination: 21 March 2016

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The First Applicant, Mr Dennis Kapralov, and the Second Applicant, Ms Nikki Cook claim that they are owed wages for the period 13 September to 4 December 2014 by the Respondent, Pauanui Bakery and Pizza Limited (the Bakery).

[2] Mr Kapralov and Ms Cook have provided bank statements and Inland Revenue (IRD) earnings information in support of their claims.

Mr Kapralov

[3] Mr Kapralov said that during the period of his employment with the Bakery, he had been advised that his hourly rate of pay would be \$18.50 for the first two weeks, \$20.00 per hour thereafter and his hours of work would be full-time.

[4] For the period of his employment the IRD records based upon information supplied by the Bakery, show that during the period he was employed, Mr Kapralov was entitled to a total payment of \$8,147.29 gross, \$6,848.26 net.

[5] During his period of employment at the Pauanui Bakery and Pizza Limited, Mr Kapralov said he received sporadic payments from Ms Rolton, a Bakery director, in the sum of \$1756.27 gross.

[6] He is therefore owed the sum of \$6391.02 gross by the Bakery.

Ms Cook

[7] Ms Cook said that during the period of her employment with the Bakery, she had been advised that her hourly rate of pay would be \$15.00 per hour and she would be expected to work full-time.

[8] For the period of her employment the IRD records based upon information supplied by the Bakery, show that during the period she was employed, Ms Cook was entitled to a total payment of \$7,578.05 gross, \$6,369.75 net.

[9] During her period of employment at the Bakery, Ms Cook said she received sporadic payments from Ms Rolton in the sum of \$2,591.78 gross.

[10] She is therefore owed the sum of \$4986.27 gross by the Bakery.

Issues

[11] The issue for determination is whether the Applicants are owed unpaid wages by the Pauanui Bakery and Pizza Limited.

Failure of Respondent to attend or be represented

[12] Pauanui Bakery and Pizza Limited did not attend, and was not represented at the Investigation Meeting despite the Notice of Investigation having been served at the registered office of the Bakery.

[13] The Authority has received emails from the new owners of the Bakery denying liability in connection with the claims of unpaid wages made by Mr Kapralov and Ms Cook.

[14] An Authority Support Officer attempted on several occasions to contact Pauanui Bakery and Pizza Limited director, Ms Leigh Rolton, by email at email addresses supplied by the new owners of the Bakery, but was been unable to elicit any response.

[15] I delayed the commencement of the investigation meeting for some 10 minutes; however Pauanui Bakery and Pizza Limited did not arrive.

[16] For the reasons set out above I am satisfied that Pauanui Bakery and Pizza Limited had notice of the application and the date of the Investigation Meeting and that it chose not to attend or to be represented.

[17] I have therefore proceeded pursuant to clause 12 Schedule 2 of the Employment Relations Act 2000 to act as fully as if Pauanui Bakery and Pizza Limited had attended or been represented.

Determination

Statutory entitlement to wages

[18] The Wages Protection Act 1983 governs the payment of wages between an employer and an employee. In accordance with s 4: *an employer shall, when any wages become payable to a worker, pay the entire amount of those wages to that worker without deduction.*

[19] The Applicants' claims were supported by documentation substantiating the dates for which they were claiming non-payment and each of the Applicants gave evidence by way of affirmation which supported the documentary material filed with the Authority.

[20] I find that the Applicants are entitled to payment of wages for the hours which they have worked, less the amounts which they were paid by Ms Rolton during the course of their employment.

Remedies

Wage claims

[21] Pauanui Bakery and Pizza Limited is ordered to pay **Mr Kapralov** the sum of **\$6391.02 gross** in respect of unpaid wages for the period 13 September to 4 December 2014.

[22] Pauanui Bakery and Pizza Limited is ordered to pay **Ms Cook** the sum of **\$4986.27 gross** in respect of unpaid wages for the period 13 September to 4 December 2014.

[23] The Authority has the power to award interest pursuant to clause 11 of the Second Schedule of the Act at the rate prescribed by the Judicature Act 1908, which is currently 5% per annum¹.

[24] I consider that it is appropriate that Pauanui Bakery and Pizza Limited pay interest on the outstanding sums owed to the Applicants.

[25] Pauanui Bakery and Pizza Limited is to pay interest of 5% on the outstanding sums due to Mr Kapralov and Ms Cook.

[26] The Applicants are to be reimbursed the filing fee of \$71.56.

Costs

[27] While costs are reserved, I note here that, subject to their submissions, the Applicants were not legally represented and, unless they incurred legal costs, it is therefore unlikely they have grounds to claim a contribution to any fair and reasonable costs.

Eleanor Robinson
Member of the Employment Relations Authority

¹ Judicature (Prescribed Rate of Interest) Order 2011 (SR2011/177)