

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2016] NZERA Wellington 12  
5632131

BETWEEN            VISHAL SHARMA  
                                 Applicant

AND                    MATRIX ENTERPRISES  
                                 NEWZEALAND LIMITED t/a  
                                 KADAI JUNCTION  
                                 Respondent

Member of Authority:      Trish MacKinnon

Representatives:            Applicant in person  
                                 Kapil Bhatt, Advocate for Respondent

Investigation Meeting:      31 October 2016

Submissions Received:      On the day from Applicant and Respondent

Determination:              2 March 2017

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Vishal Sharma was employed as a full time chef from mid-March 2015 to 30 June 2015. He claims to have been underpaid throughout his employment and not paid holiday pay due to him when he ended his employment over his dissatisfaction with the wages he was being paid. Mr Sharma also claims he was not paid for public holidays during his employment. He seeks arrears of wages.

[2] Matrix Enterprises Newzealand (sic) Limited t/a Kadai Junction (Matrix) acknowledges it owes holiday pay to Mr Sharma. Its sole director, Kapil Bhatt, says he has been willing to pay the outstanding holiday pay to Mr Sharma but was unable to agree the amount owing with him. Mr Bhatt denies Mr Sharma was underpaid throughout his employment and says Mr Sharma has fabricated claims regarding his

hours and days of work. Mr Bhatt says Mr Sharma worked 40 to 42 hours per week for which he was paid. He did not work public holidays and did not work seven days a week as he claimed.

[3] Mr Bhatt no longer operates the restaurant, having sold his business, but he remains the sole director of the company under which he operated the restaurant.

[4] This determination has been issued outside the statutory period of three months after receiving the last communication from one of the parties. When I advised the Chief of the Authority this would occur he decided, as he is permitted by s174D(3) of the Act to do, that exceptional circumstances existed for providing the written determination of the Authority's findings later than the latest date specified in s174D(2) of the Act.

### **Issues**

[5] The issues for the Authority to determine are:

- (a) What hours Mr Sharma worked;
- (b) Whether he worked on public holidays;
- (c) Whether wage arrears are owing to him; and
- (d) What amount of holiday pay is owing to him.

### **Mr Sharma's hours of work**

[6] Mr Sharma produced a document recording the hours and days he worked from 17 March 2015 to 29 June 2015. He said he had noted his hours on his mobile phone on a daily basis and, at a later stage, had transferred that information to the daily record of hours he produced to the Authority. It was Mr Sharma's evidence that he had never been given timesheets by his employer which is why he used his own informal recording system via his phone.

[7] He said he was the only chef working at Kadai Junction during his period of employment and he would work from 10.30am to 2.30pm doing lunch on five days of the week and then from 3.30 or 4pm until anywhere between 9.30pm and 10.30pm cooking dinners on all seven days of the week. According to his written record of hours worked, the restaurant was closed for lunch on Sundays and Mondays.

[8] A former co-worker of Mr Sharma's, who was the manager of the restaurant from April 2015 to January 2016, confirmed the hours and days Mr Sharma worked hours. I treat the co-worker's evidence with some caution as he acknowledged in the course of the investigation meeting that he intended to file his own proceedings for wage arrears against Matrix.

[9] Mr Bhatt said Mr Sharma worked between 40 and 42 hours a week. He said that from 1 April 2015 the restaurant did not serve lunch except from Thursday to Saturday. It opened for dinner seven nights a week. He said he and his wife operated the restaurant on their own on Mondays and Tuesdays. He said he took Mr Sharma's hours from the timesheets he filled in and paid him according to those hours.

[10] As noted earlier, Mr Bhatt did not produce those timesheets as he said the wages and time book had been taken by a former employee who had not returned it to the restaurant. He named that employee as the manager of the restaurant who gave evidence for Mr Sharma. The manager denied the allegation.

[11] Mr Bhatt did provide timesheets for a person he said was an employee after Mr Sharma had left his employment. I understand these were advanced for the purpose of persuading me that it had been his practice to require employees to complete timesheets. However, those timesheets have no relevance to Mr Sharma's situation and are of no assistance to my investigation.

[12] In the absence of credible evidence from Matrix to the contrary, I accept Mr Sharma's evidence that he did not complete timesheets during his employment at Kadai Junction.

[13] Section 130 of the Employment Relations Act 2000 (the Act) requires an employer to keep wages and time records for each employee. It specifies the information that must be kept. This includes the number of hours worked each day in a pay period, the pay for those hours, the wages paid to the employee for each pay period and the method of calculation.

[14] Section 132 of the Act, concerns an employer's failure to keep or produce records in respect of an employee who brings a claim to the Authority. Where that failure has prejudiced the employee's ability to bring an accurate claim, the Authority has the discretion to accept as proved all claims made by the employee in respect of wages actually paid and the hours, days and times worked by the employee.

[15] In this instance I accept Mr Sharma's evidence of the hours he worked. His record of time worked shows that he worked on four days that were public holidays during this period. In accepting his evidence, I accept that he worked on Easter Friday and Easter Monday, Anzac Day and Queens Birthday in 2015.

[16] There is no evidence he was paid time and a half for the hours he worked on those public holidays in accordance with the requirements of s 50 of the Holidays Act 2003, or that he was given an alternative day off as provided by s 56 of that Act.

### **Wage arrears**

[17] Mr Sharma is entitled to wage arrears. In checking his record of hours worked I discovered he had totalled the hours incorrectly on three occasions, one of which was in his favour, while the other two were to his disadvantage. In calculating the wage arrears owing to him I have used the corrected totals.

[18] Mr Sharma had no employment agreement but there was no dispute his agreed hourly rate was \$16.50. He provided evidence comprising IRD documentation and bank statements for the period of his employment. These showed he received \$9,570 gross during the period. Based on the hours Mr Sharma actually worked he should have been paid \$15,039.75 gross if all hours were paid at \$16.50.

[19] As I have already noted, however, Mr Sharma should have been paid at time and a half for the hours he worked on public holidays. When that adjustment, totalling an additional \$259.88, is made, the amount he should have been paid over his employment is \$15,299.63 gross. Matrix is required to pay the difference of \$5,729.63 gross to Mr Sharma.

### **Holiday pay**

[20] Mr Bhatt acknowledged that Mr Sharma had not been paid holiday pay. He is entitled to 8% of his gross earnings calculated on the wages he should have received of \$15,299.63. This amounts to \$1,223.97. Additionally, as I have found Mr Sharma worked on four public holidays, he is entitled to four alternative days' leave. The amount for those four days, calculated on the basis of relevant daily pay in accordance with s 9 of the Holidays Act, is \$519.75 gross.

**Determination**

[21] Matrix Enterprises Newzealand Limited is ordered to pay Mr Sharma the following amounts:

- (a) wage arrears in the sum of \$5,729.63 gross;
- (b) holiday pay in the sum of \$1,743.72 gross.

**Costs**

[22] As Mr Sharma represented himself the issue of costs does not arise.

Trish MacKinnon  
Member of the Employment Relations Authority