

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 250
3004511

BETWEEN SENG-HANN TENG
 Applicant

A N D AUBRICKS NEW ZEALAND
 LIMITED, BRICK AND BLOCK
 LIMITED & NEW ZEALAND
 BMG GROUP LIMITED
 Respondents

Member of Authority: Anna Fitzgibbon

Representatives: Applicant in person
 Wei Wu, director of first and second named
 Respondents

Investigation Meeting: 23 August 2017 at Auckland

Oral Determination: 23 August 2017

Written Record: 24 August 2017

ORAL DETERMINATION OF THE AUTHORITY

Employment relationship problem

Background

[1] The applicant, Mr Seng-Hann Teng, was employed by Aubricks New Zealand Limited (Aubricks) as a sales manager from November 2014 until his resignation on 30 September 2016.

[2] Mr Teng's wages were paid by three different companies. Sometimes he was paid by Aubricks, sometimes by Brick and Block Limited (Brick & Block) and sometimes by New Zealand BMG Group Limited (BMG).

[3] Mr Wei Wu is the director of Aubricks and Brick & Block. His wife is the director of BMG.

[4] Mr Teng says he is owed final wages and holiday pay by Aubricks. Mr Teng says he has never had any holidays and is owed holiday pay for the whole time of his employment.

[5] Mr Wei Wu accepts that Mr Teng was not paid his final wages nor any holiday pay.

[6] Mr Teng filed a statement of problem in the Authority on 7 April 2017. The respondent filed a statement in reply subsequently. The parties have tried unsuccessfully to resolve matters at mediation on two occasions.

[7] A telephone conference was held with the Authority during which time the parties were told what they needed to bring as evidence to the investigation meeting. Mr Teng has provided his Inland Revenue Department (IRD) records. No employment records were provided by Aubricks.

Wages and holiday pay owing

[8] According to Mr Teng's IRD records, his gross wages total was \$68,545 for the entire period of his employment. Eight percent of that gross figure amounts to \$5,483.60

[9] Both parties agree that Mr Teng is owed one week's wages by Aubricks. This amounts to \$961.54 gross.

[10] Mr Wu says he did not pay Mr Teng his holiday pay or final wages because one of Aubricks' largest clients with whom Mr Teng worked and had a business relationship still owes Aubricks a significant amount of money. Mr Wu says he asked to meet with Mr Teng about the client but Mr Teng did not meet with him.

[11] Mr Teng says he informed Mr Wu of the situation with the client before he resigned and does not accept that he was responsible for the moneys owed by the client to Aubricks.

[12] If Mr Wu had issues concerning the client, then these should have been raised during Mr Teng's employment. They were not.

[13] Aubricks was not entitled to withhold Mr Teng's holiday pay and wages on this basis.

[14] Accordingly I order Aubricks to pay Mr Teng the sum of \$5,483.60 gross in holiday pay and one week's wages of \$961.54 gross. These sums are to be paid to Mr Teng within 14 days of today's date together with interest at the rate of 5% per annum from 30 September 2016 until full payment is made.

Anna Fitzgibbon
Member of the Employment Relations Authority