

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2018] NZERA Wellington 41  
3024359

BETWEEN           BLAIR PADMAN  
                          Applicant

AND                   RUSCOE & SONS  
                          DECORATORS LIMITED  
                          Respondent

Member of Authority:    M B Loftus

Representatives:         Blair Padman on own behalf  
                              No appearance for Respondent

Investigation Meeting:   15 May 2018 at Wellington

Submissions Received:   At the investigation meeting

Determination:           15 May 2018

---

**ORAL DETERMINATION OF THE AUTHORITY**

---

[1] Blair Padman seeks payment of wages he says he is yet to receive from his employer, Ruscoe & Sons Decorators Limited (Ruscoe). His claim totals \$6163.20 being \$3040.00 unpaid wages and \$3132.20 outstanding holiday pay.

[2] Ruscoe's position is unknown given a failure to participate in the Authority's process. There is no statement in reply nor has Ruscoe otherwise responded to the papers served upon it. Ruscoe did not attend today's Investigation Meeting which also raises the question of whether or not I should proceed.

[3] All companies are required to have an address for service.<sup>1</sup> Ruscoe's is 57 Wellington Road, Wainuiomata, Lower Hutt. I am satisfied all relevant papers, including the notice of investigation meeting, have been properly served at that

---

<sup>1</sup> Section 192(1) of the Companies Act 1993

address. Mr Padman arranged personal service and there is both documentary and photographic evidence it occurred.

[4] The notice of investigation meeting includes advice that should a respondent fail to attend the Authority may proceed and issue a determination in favour of the applicant.<sup>2</sup> I also note regulation 8(3) of the Employment Relations Authority Regulations 2000 which provides that in circumstances such as those present here the claim can only be defended with leave of the Authority. Leave has not been sought.

[5] Given the above and no notification of or explanation for Ruscoe's absence I consider it appropriate to continue. Mr Padman is entitled to have his claim heard.

[6] Mr Padman commenced with Ruscoe's in September 2016. The arrangement continued without difficulty until 11 December 2017 which was when Ruscoe stopped paying Mr Padman. When Mr Padman asked where his wages were he was told by the Ruscoe's sole director, Derek Ruscoe, the company was experiencing difficulties as it had not been paid by its client. Mr Padman was told he would be paid when Ruscoe was and continued working in the expectation all would be well.

[7] Unfortunately, and despite further conversations along the lines of that just described, the situation continued. By mid-January 2018 Mr Padman had had enough and it was then he advised Ruscoe he would not return till he had been paid. He says that is yet to occur and now seeks payment for the period 11 December 2017 to 12 January 2018 over which he continued to work without pay.

[8] I have had an opportunity to question Mr Padman whose claim is supported with pay slips dating from the period for which he was paid along with timesheets for the period he is claiming, bank records and texts which passed between Mr Padman and Ruscoe and confirm the fact money is owed. Here I note the pay records also specify amount of unused leave due to Mr Padman (and to which I have added a further amount to account for that due on the unpaid wages).

[9] I also note Mr Padman came across as an extremely honest witness who willingly advised undocumented facts which had the effect of reducing the amount it would have appeared payable from the documentation.

[10] I accept the claim and conclude the amount sought is payable.

[11] There is then the issue of costs to which Mr Padman is entitled having been wholly successful. Given he is self-represented these are, however, limited to reimbursement of the Authority's filing fee. That too is payable.

### **Orders**

[12] For the above reasons I order the respondent, Ruscoe & Sons Decorators Limited, pay the applicant, Blair Padman, the sum of \$6163.20 (six thousand, one hundred and sixty three dollars and twenty cents) being unpaid wages along with a further \$71.56 (seventy one dollars and fifty six cents) being reimbursements of the Authority's filing fee which Mr Padman paid.

[13] Payment can be made to the same account as earlier wage payments and this is to occur no later than 4.00pm on Friday 1 June 2018.

[14] In closing I caution the respondent and its director, Derek Ruscoe, that failure to comply with the above orders may result in further consequences, some of which are serious. They could potentially include the imposition of fines, the sequestration of property and/or imprisonment.

M B Loftus  
Member of the Employment Relations Authority