

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2019] NZERA 482
3065456

BETWEEN

ELLIOT BULL
Applicant

AND

OUT THERE BUSINESS
SOLUTIONS LIMITED
Respondent

Member of Authority: Robin Arthur
Representatives: Applicant in person
None advised for the Respondent
Investigation Meeting: On the papers
Determination: 16 August 2019

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Elliot Bull sought an order for wages and holiday pay not paid to him after the end of his employment with Out There Business Solutions Limited (OTBSL).

[2] Authority records show a copy of Mr Bull's statement of problem was delivered by courier to the registered office of OTSBL on 19 July 2019. A further copy was sent to email addresses for OTSBL's director Darren Wallbank on 5 August 2019. No statement in reply was lodged by the company within the statutory period of 14 days and OTBSL made no other contact with the Authority about that correspondence.

[3] In the absence of any response or engagement by OTBSL Mr Bull's application to the Authority has been determined on the papers.¹

Claim for wage arrears

[4] The following facts set out in his uncontradicted application are accepted. Mr Bull worked as an intermediate level accountant for OTBSL from 13 March 2017. He resigned from that job on 24 January 2019, giving four weeks' notice. By agreement with Mr Wallbank the notice period was reduced to one week and Mr Bull's employment ended on 1 February 2019.

[5] Mr Bull was usually paid at the end of the month however after his employment ended on 1 February he was not paid for the month of January 2019. He contacted Mr Wallbank by email on 12 February to ask about the payment. Mr Wallbank replied that a new bank facility was being loaded and the payments due would be made "in a couple of payments".

[6] By 4 March no payment was made and Mr Bull again enquired by email. Mr Wallbank replied that he had problems with getting a bad debt paid. He said he would pay Mr Bull \$1,000 that day and "look to put through a \$1,000 every couple of days to clean this up".

[7] Mr Bull received the \$1,000 part payment but nothing further before he enquired again on 26 March but got no reply to his email. On 12 April Mr Bull sent Mr Wallbank a further email noting payment of the January salary was 10 weeks overdue.

[8] Mr Bull had asked for but was not sent a final payslip. Using the IRD PAYE filing information Mr Bull calculated he was due the total sum of \$5,341.68 as his final payment for wages and holiday pay. Deducting the \$1,000 part payment made in early March, the balance due to him was \$4,341.68. Mr Bull advised Mr Wallbank that he would take further steps to recover the funds if the amount due was not paid by 30 April. Mr Wallbank did not reply and no further payment was made. Mr Bull then lodged his claim in the Authority on 16 July 2019.

¹ Employment Relations Act 2000 s 173(2), s 174D and Schedule 2 clause 12.

Orders for payment, interest and reimbursement of Authority fee

[9] In the absence of any response from OTBSL Mr Bull has established he is entitled to an order for payment of arrears of wages and holiday pay under s 131 of the Employment Relations Act 2000 (the Act).

[10] Accordingly OTBSL must pay Mr Bull the sum of \$4,341.68 within 28 days of the date of this determination.

[11] Mr Bull is also entitled to an award of interest because he has been denied use of money he was due to be paid, in full, as wages and holiday pay in early February. OTBSL must pay interest on the sum of \$4,341.68 for the period from Monday, 4 February 2019 until the day that the payment ordered in this determination is made. The amount of interest is to be calculated in accordance with Schedule 2 of the Interest on Money Claims Act 2016, using the civil debt interest calculator provided online by the Ministry of Justice.²

[12] OTBSL must also reimburse Mr Bull the sum of \$71.56 paid to lodge his application in the Authority.

[13] Orders made by the Authority may be filed in the District Court and are enforceable in the same manner as an order given by the District Court.³

Summary of orders

- [14] Within 28 days of the date of this determination OTBSL must pay Mr Bull:
- (i) \$4,341.68 in arrears of wages and holiday pay due to him; and
 - (ii) Interest on that sum from 4 February 2019 until the date of payment; and
 - (iii) \$71.56 in reimbursement of the Authority fee.

Robin Arthur
Member of the Employment Relations Authority

² <https://www.justice.govt.nz/fines/civil-debt-interest-calculator>.

³ Employment Relations Act 2000, s 141(1).