

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2019] NZERA 726  
3075052

BETWEEN	ELISANGELA DA ROCHA CAMPOS Applicant
AND	SUPER CITY CLOTHING SOLUTIONS LIMITED Respondent

Member of Authority: Vicki Campbell

Representatives: Ronald Trounson for Applicant  
Rosalie Lyon for Respondent

Investigation Meeting: 20 December 2019

Oral Determination: 20 December 2019

Record of Oral Determination: 20 December 2019

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**RECORD OF ORAL DETERMINATION OF THE AUTHORITY**

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- A. Supercity Clothing Solutions Limited is ordered to pay to Ms Da Rocha Campos \$1,565.09 gross as arrears of wages under s 131 of the Act within 14 days of the date of this determination.**
- B. Supercity Clothing Solutions Limited is ordered to pay to Ms Da Rocha Campos \$71.56 in reimbursement of her filing fee within 14 days of the date of this determination.**

## **Employment relationship problem**

[1] Ms Da Rocha Campos comes from Brazil. Ms Da Rocha Campos has English as a second language. I was assisted during the investigation meeting by an interpreter in the Portuguese language.

[2] After 18 months in New Zealand learning English Ms Da Rocha Campos approached Supercity Clothing Solutions Limited (SCSL) about work as a sewing machinist.

[3] Following her approach Ms Rosalie Lyons, the sole director and shareholder of SCSL offered to take Ms Da Rocha Campos on as a trainee. She was offered an hourly rate of \$13.20 which Ms Da Rocha Campos accepted.

[4] Ms Da Rocha Campos undertook work completing garments for SCSL's clients. She was therefore contributing to the commercial enterprise of the business.<sup>1</sup> I find this was an employment relationship and the Minimum Wage Act 1983 applies to that relationship.

[5] Ms Da Rocha Campos worked for SCSL from 23 October to 29 November 2018. During that time she received payment for only 43.5 hours at less than the minimum wage rate.

[6] On 19 May 2019 Ms Da Rocha Campos wrote to Ms Lyons requesting payment of her outstanding wages. This was followed up on 16 June. In response to the 16 June email Ms Lyons advised Ms Da Rocha Campos that she was sick and in receipt of a sickness benefit. Ms Lyons was no longer operating her business at that time due to her illness. Despite that Ms Lyons offered to pay the outstanding wages by incremental payment. This offer was rejected by Ms Da Rocha Campos.

[7] A further request was made on 20 June 2019 with a similar response that Ms Lyons had no money and was in receipt of a sickness benefit. Ms Lyons agreed to attend mediation in an effort to resolve the matter.

[8] Despite efforts to arrange a convenient mediation date, Ms Lyons consistently cancelled dates and so the parties have not had the benefit of mediation. SCSL then failed to engage in the Authority's processes until the date of the investigation meeting.

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<sup>1</sup> *The Salad Bowl Limited v Amberleigh Howe-Thornley* [2013] NZEmpC 152

At the commencement of the investigation meeting Ms Lyons made an oral application for leave to respond to Ms Da Rocha Campos's claim. Because it is always preferable to hear both sides of a problem I granted leave.

[9] Ms Lyons says the business is no longer trading and has no income. The Authority has not received any documents or other evidence to support Ms Lyons statements.

### **Issues**

[10] In order to resolve Ms Da Rocha Campos's application I must determine whether she is owed any arrears of wages.

[11] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made as a result. While I have not referred in this determination to all the evidence received I have carefully considered everything.

### **Arrears of wages**

[12] Ms Da Rocha Campos worked a total of 122.5 hours for SCSL in the period 23 October to 29 November 2018. She has provided completed timesheets showing the days and hours she worked.

[13] Ms Da Rocha Campos has established her claim for arrears of wages for 122.5 hours at the minimum wage of \$16.50 totalling \$2,021.25 gross. Ms Lyons paid Ms Da Rocha Campos a cash amount of \$520 in October 2018. This equates to a gross amount of \$617.86 leaving a balance of \$1,403.39 gross owing.

### **Holiday Pay**

[14] Ms Da Rocha Campos is entitled to holiday pay on her arrears of wages calculated at 8 percent of her total gross earnings. This amounts to \$161.70 gross.

### **Orders**

[15] Supercity Clothing Solutions Limited is ordered to pay to Ms Da Rocha Campos \$1,565.09 gross as arrears of wages under s 131 of the Act within 14 days of the date of this determination calculated as follows:

- a) \$1,403.39 gross for unpaid minimum wages; and
- b) \$161.70 gross for unpaid holiday pay.

**Costs**

[16] Ms Da Rocha Campos is entitled to reimbursement of the filing fee on this application.

[17] Supercity Clothing Solutions Limited is ordered to pay to Ms Da Rocha Campos \$71.56 in reimbursement of her filing fee within 14 days of the date of this determination.

**Certificate of determination**

Pursuant to Regulation 26 of the Employment Relations Authority Regulations 2000 Ms Da Rocha Campos is to be provided with a Certificate of Determination, sealed with the seal of the Authority recording that within 14 days of the date of this determination, Supercity Clothing Solutions Limited is ordered to pay to Ms Da Rocha Campos:

- a) Unpaid wages of \$1,403.39 gross;
- b) Unpaid holiday pay of \$161.70 gross; and
- c) Costs of \$71.56

Vicki Campbell  
Member of the Employment Relations Authority