

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2019] NZERA 185  
3052192

BETWEEN JYOTI BEHL and HARKIRAN  
SINGH  
Applicants

AND WATAN AUTO PARTS  
LIMITED  
Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Applicants in person  
No appearance by or on behalf of the Respondent

Investigation Meeting: 28 March 2019, conducted by telephone

Date of Determination: 28 March 2019

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**ORAL DETERMINATION OF THE AUTHORITY**

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- A. The respondent, Watan Auto Parts Limited (Watan) is ordered to pay Ms Jyoti Behl unpaid wages in the sum of \$1,128 gross within 14 days of the date of this determination.**
- B. Watan is ordered to pay Mr Harkiran Singh unpaid wages in the sum of \$1,160 gross within 14 days of the date of this determination.**
- C. Watan is ordered to pay Ms Behl and Mr Singh the sum of \$71.56 being the filing fee, within 14 days of the date of this determination.**

**Respondent's failure to participate in the Authority's investigation**

[1] There was no participation on behalf of Watan in the investigation meeting scheduled this morning to take place by telephone conference.

[2] The Authority has the power to proceed if a party fails to attend a hearing pursuant to clause 12 of Schedule 2 of the Employment Relations Act 2000 (the Act):

**12. Power to proceed if any party fails to attend**

If, without good cause shown, any party to a matter before the Authority fails to attend or be represented, the Authority may act as fully in the matter before it as if that party had duly attended or been represented.

[3] The statement of problem was served on Watan by the Authority on 29 January 2019. No statement in reply has been filed by Watan. Instead one of the directors of Watan, Mr Ali Bator sent an email on 13 February 2019 to the Authority replying to the claims by Ms Behl and Mr Singh.

[4] Notice of a teleconference on 7 March 2019 at 10.30am was sent by email to both parties by the Authority on 5 March 2019. The applicants participated in the teleconference, no one participated on behalf of Watan.

[5] Following the teleconference, the Authority issued directions and informed the parties that upon receipt of information sought by the Authority, an investigation meeting would be scheduled.

[6] A notice of investigation meeting to be held by telephone conference on Thursday, 28 March 2019 at 9.30 am was served on both parties by email dated 20 March 2019.

[7] At 9.25 am on 28 March 2019, Mr Bator emailed the Authority seeking an adjournment of the investigation meeting because his "boss Murad is going out of the country. He won't be able to attend. Please postpone. I will call him and see if he allows me to attend in his behalf".

[8] An email was sent to Mr Bator at 9.28am informing him that the hearing would be proceeding and asked him to provide his phone number. Mr Bator provided his phone number at 9.57 am.

[9] The investigation meeting did not proceed at 9.30 am as the Authority was not able to contact the applicants. The applicants were informed if they did not make contact with the Authority by 12 noon, their application would be struck out.

[10] The applicants did make contact and the Authority tried again to reconvene the investigation meeting. The parties were informed by phone the matter would be proceeding at 11.30 am. Mr Bator failed to respond to phone calls made to his mobile phone number. The Authority member rang Mr Bator's number, it was answered by "Jack". The Authority member explained who she was and asked to speak with Mr Bator. She was informed by Jack that Mr Bator was on a truck outside and could not take the call.

[11] Ms Fitzgibbon informed Jack that the matter would be proceeding. Jack said he would text Mr Bator to tell him.

[12] The parties were emailed by the Authority and informed the investigation meeting would take place at 11.45 am.

[13] Upon receipt of the Authority's email Mr Bator emailed the Authority to ask again for the investigation meeting to be postponed as he was on "state highway one and can't talk right now".

[14] In view of the above efforts to contact Watan and its director, Mr Bator, its failure to file any document or participate in the teleconference and investigation meeting, the Authority is satisfied it may continue to hear this matter today.

### **Investigation meeting**

[15] Ms Behl and Mr Singh filed a statement of problem setting out their version of events in respect of wages they stated were unpaid by Watan. Each affirmed their evidence to the Authority in relation to their version of events to be true and correct.

[16] As permitted under s 174 of the Act, this determination does not set out all the evidence received. The determination states finding of fact and law, and makes conclusions on issues necessary to dispose of the matter.

**Employment Relationship Problem**

[17] The respondent, Watan Auto Parts Limited (Watan) is in the business of exporting car parts primarily to Dubai. Mr Ali Bator is one of the directors of Watan. Mr Murad Ali Hossaini is the other director.

[18] Mr Harkiran Singh and his wife Ms Jyoti Behl, were employed by Watan. Mr Singh was employed as a manager who dealt with all issues concerning the export of car parts. Ms Behl was employed as an assistant manager. Her role was to monitor Watan's Trade Me account, attend to Watan's accounts among other things.

[19] Mr Singh was employed at a rate of \$18 gross an hour plus commission. Ms Behl was employed at a rate of \$20 gross an hour.

**Unpaid wages**

[20] Ms Behl and Mr Singh say that they are owed wages from 28 August 2017 to 10 September 2017. They each say that they have asked on numerous occasions for the money to be paid but this has been refused. They have also arranged mediation with Mediation Services of MBIE but Mr Bator never attended, even though he agreed to come.

[21] The amount Ms Behl says is owing to her is \$1,128 gross and the amount Mr Singh says is owed to him is \$1,160 gross.

**Watan's response**

[22] Watan failed to file a statement in reply and did not participate in today's investigation meeting.

[23] An email was sent by Mr Bator to the Authority on 13 February 2019. Mr Bator disputed Ms Behl and Mr Singh's claims. He said they applied for work at Watan and promised to work. In anticipation of Ms Behl and Mr Singh working at Watan, a considerable amount of money was spent on new shelving and other items at a cost of approximately \$10,000.

[24] Mr Bator said he expected Ms Behl and Mr Singh to stay and work for them.

Mr Bator goes on to state:

Jyoti was good and come work most days. She did work hard we accept that. But Harkiran never came on time. He was late almost every day for an hour, even 2-3 hours some days. He would not take our calls or reply to our text messages. Despite that we kept going in the hope of things getting better. Nothing changed, and they decided to travel overseas. We were not given any kind of notice. But they did promise to come back to work when they returned to New Zealand. Upon their arrival they did not return to work. We have endured major financial loss because of them. We lost customers and reputations. Harkiran had made deals with our customers on Trademe that we were not aware of. Weeks after they had travelled overseas we started getting calls from our customers. He had charged the money which we had not received. He had sold them parts that we did not have. We had to refund a few people, as we had no idea what he had done. We tried contact him but he was not reachable and ignored our calls. We are more than happy to take this issue further if need be. We are busy and that is why we just ignored what they had done. But I'm 100% sure that we have met every one of our responsibilities towards them.

Kind regards  
Ali Bator

[25] Mr Bator failed to participate in the investigation meeting by telephone. Accordingly, he was unable to provide the Authority with any evidence in support of these claims.

### **IRD records and bank statements provided by Ms Behl and Mr Singh**

[26] Ms Behl and Mr Singh were asked to provide the Authority with IRD statements and bank statements, which they did. The IRD records demonstrate that Ms Behl earned a total of \$11,280 gross for the period from 1 April 2017 to 31 March 2018 when she worked for Watan. The records show that Mr Singh earned \$14,000 for the period from 1 April 2017 to 31 March 2018.

[27] The Authority was provided with bank statements which show wages being paid by Watan to Mr Singh and Ms Behl on a regular basis, but not always in a timely way.

[28] One of the issues that Mr Bator said he had with Ms Behl and Mr Singh was that they had gone overseas. Ms Behl and Mr Singh dispute this. They say that they asked for some time off in September 2017 to get married. They have provided the Authority with a signed copy of their marriage certificate which establishes that they were married on 25 September 2017 in Tauranga.

**Bank records**

[29] I have reviewed the bank records provided by Ms Behl and Mr Singh. They demonstrate that the last payment each received from Watan was on 1 September 2017. I accept their evidence that they are owed wages from 28 August 2017 to 10 September 2017.

**Orders**

[30] I order Watan to make payment to Ms Behl of unpaid wages owed to her in the sum of \$1,128 gross within 14 days of the date of this determination.

[31] I order Watan to pay Mr Singh unpaid wages owed to him in the sum of \$1,160 gross within 14 days of the date of this determination.

**Costs**

[32] Watan is to pay Ms Behl and Mr Singh the sum of \$71.56 being the filing fee, within 14 days of the date of this determination.

**Certificate of determination**

[33] I direct that pursuant to Regulation 26 of the Employment Relations Authority Regulations 2000, Ms Behl and Mr Singh be provided with a certificate of determination, sealed with the seal of the Authority, recording respectively that Watan Auto Parts Limited is ordered within 14 days of this determination to pay Ms Behl the sum of \$1,128 gross and Mr Singh the sum of \$1,160 gross together with \$71.56 for the filing fee.

**Anna Fitzgibbon**  
**Member of the Employment Relations Authority**