

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2019] NZERA 233
3055558

BETWEEN	JESSE WILLIAM PAUL Applicant
AND	B J RAKENA BUILDERS LIMITED First Respondent
	BARRY JON RAKENA Second Respondent

Member of Authority:	Christine Hickey
Representatives:	Applicant in person Barry J Rakena for the First Respondent Second Respondent in person
Date of investigation meeting:	Agreement reached during a case management conference on 9 April 2019
Date of Determination:	17 April 2019

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] During a case management teleconference I conducted on 9 April 2019 the parties agreed on how to resolve Jesse Paul's claim for unpaid leave entitlements.

[2] The senior Authority Officer sent the parties a draft of this determination for comment on 11 April 2019, to check that it reflected the agreement reached at the teleconference.

Mr Paul responded on 12 April 2019, asking for some minor adjustments in relation to the agreed sale of the van.

[3] On 16 April 2019 at 8.41am the senior Authority Officer sent the respondents a further email reminding them that the Authority had asked for their comments about the draft determination and asked for any response to Mr Paul's 12 April 2019 email.

[4] I am satisfied that the email address through which the Authority officer has been corresponding with the respondents is a current operational address because the Second Respondent sent information to the Authority confirming further amounts due to Mr Paul from that address on 9 April 2019 after the case management conference.

[5] By 11.30 am on 17 April 2019, more than one week since the case management conference call, the Authority has not had any comment from the respondents objecting to the way the agreement has been recorded.

[6] I am satisfied that this determination records the actual agreement made between the parties with only minor amendments made to allow the orders to be enforced if that becomes necessary. I am satisfied that those amendments are in line with the spirit of the agreement made orally between the parties on 9 April 2019.

[7] With Mr Rakena's agreement, under s 221 of the Employment Relations Act 2000 I join Barry Jon Rakena as the Second Respondent.

[8] Mr Rakena agreed that the First Respondent, which was Mr Paul's employer for a long period of time, owes Mr Paul 69.75 days of unpaid annual leave and alternative days entitlements from when his employment ended.

[9] Mr Rakena was apologetic to Mr Paul and stated that the First Respondent also owes the IRD PAYE and is close to ceasing trading. Mr Rakena has always agreed with Mr Paul that he is owed money but said the company was in a poor financial situation and neither it nor Mr Rakena have been able to pay Mr Paul his leave entitlements.

[10] Mr Rakena and Mr Paul agreed that the debt to Mr Paul has the first call on any proceeds of a van that Mr Rakena proposes to sell. However, both parties acknowledge that the van is unlikely to sell for the full amount owed.

[11] After that, if the First Respondent cannot pay Mr Paul what it owes him Mr Rakena agrees to be personally liable for the amount still owed to Mr Paul.

[12] Mr Rakena has supplied Mr Paul's payroll information which discloses that the First Respondent should have paid Mr Paul a total of \$16,484.15 gross in holiday entitlements when he finished working for it.

Orders

1. B J Rakena Limited must pay Jesse William Paul \$16,484.15 gross as soon as possible. The parties agree that the first payment towards that amount should come from the sale of the van, which the First and Second Respondent must offer for sale by 23 April 2019, with the sale to be completed by 6 May 2019.
2. Also by 23 April 2019, the Respondents must send the Authority and Jesse Paul proof that they have listed or advertised the van for sale.
3. B J Rakena Limited must also reimburse Jesse William Paul \$71.56 for the filing fee Mr Paul paid to bring his claim to the Authority.
4. Barry Jon Rakena must pay Jesse William Paul any balance of the total amount outstanding owed by the First Respondent as soon as possible after 31 May 2019. The parties may agree on a payment plan.
5. Jesse William Paul may return to the Authority, at no further cost, for an order that the Respondents comply with this determination if they do not do so in a reasonably timely way.

Christine Hickey
Member of the Employment Relations Authority