

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2020] NZERA 113
3060539

BETWEEN LEIGH BUTLER-HADDON
Applicant

AND STEEL REINFORCING
SPECIALISTS LIMITED
First Respondent

AND SIMON WAYNE JOHNSON
Second Respondent

Member of Authority: Michael Loftus

Representatives: Margaret Williams, advocate for the Applicant
No appearance by respondents

Investigation Meeting: On the papers up to and including 28 February 2020

Date of Determination: 10 March 2020

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This is a claim for unpaid wages and holiday pay. Interest is also sought.

[2] Penalties were originally sought but those claims have been withdrawn.

[3] The respondents' position is unknown as neither has made any attempt to participate in the Authority's process which raises the question of whether or not I should proceed.

[4] The first respondent, Steel Reinforcing Specialists (SRSL), is a company. Companies are required to have an address for service.¹ SRSL's is 15 Cleveland Road, Parnell, Auckland.

[5] The second respondent, Mr Johnson, is SRSL's sole director and shareholder. As with a company a director is required to maintain an address at which documents can be served.² In this case Mr Johnson uses the same address, 15 Cleveland Road, Parnell.

[6] The evidence satisfies me the relevant documents have been served at that address more than once with the most recent delivery occurring at 3.07pm on Tuesday 11 February 2020. Included with this delivery was a notice of direction which, prompted by the respondents previous inaction, advised this application would be determined on the papers with the respondents being given a further opportunity to provide input. They did not do so and nor was there any other response.

[7] In such circumstances I consider it appropriate to continue, as advised, on the papers. An employer cannot avoid its obligation to pay its staff by simply ignoring a claim.

Background

[8] Mr Butler-Haddon was employed by SRSL between October 2017 and June 2018. He was paid \$25.00 per hour though there was no written employment agreement. Weekly pays varied as they were dependent on the hours actually worked and to this end Mr Butler-Haddon completed weekly timesheets which were sent to Mr Johnson.

[9] The employment came to an end when Mr Butler-Haddon went to work for a company to whom his services had previously been contracted via SRSL. While there is a suggestion the circumstances leading to the change of employer, which included delayed wage payments, might have given rise to a personal grievance none has been raised.

¹ Section 192(1) of the Companies Act 1993

² Section 387A(1)(b) of the Companies Act 1993

[10] What has occurred, according to Mr Haddon-Butler, is that he never received his final pay. Mr Haddon-Butler says this should have covered his final weeks work and holiday pay.

Discussion

[11] With respect to wages Mr Butler-Haddon says he was not paid for his last weeks work; 18 to 22 June 2018. He says he believes he worked about 40 hours that week and therefore estimates the outstanding amount to be \$1,000.

[12] The claim with respect to holiday pay is again estimated. Mr Butler-Haddon says, and this is supported by the relevant payslip, that he had an unpaid annual leave balance of 88 hours as of 31 May 2018. To that he adds 8% of his estimated earnings for June resulting in a holiday pay claim of \$2,440.00 gross.

[13] Having considered the affidavits, the supporting documentation and SRSL's lack of response or denial I accept the claim is valid. With respect to amount I note Mr Butler-Haddon sought a copy of his wages and time record when initially raising his claim with SRSL but this was not forthcoming.³ In such circumstances s 132 of the Employment Relations Act 2000 (the Act) allows me to accept the claim as quantified by the applicant. I will order payment accordingly.

[14] Turning to the claim against Mr Johnson personally. His identification as a respondent was expressed as being for the purpose of obtaining leave to transfer liability for the wages in the event SRSL fails to pay.⁴

[15] To be personally liable under s 142Y of the Act it must first be established the individual to whom responsibility for the debt is being transferred is a *person involved*. That Mr Johnson is a person involved is clear. He was, and remains, SRSL's sole director. He was therefore an officer to whom responsibility can be transferred under s 142W(2).⁵

[16] To that I add the fact the evidence shows it was he to whom timesheets were forwarded and who organised payment. It follows he must be considered to have been involved by virtue of ss142W(1)(a) and (c).

³ Letter Taranaki Community Law to Simon Johnson dated 17 October 2018 at [10]

⁴ Section 142Y of the Employment Relations Act 2000

⁵ Section 142W(3)(a) of the Employment Relations Act 2000

[17] With respect to the issue of transferring liability for unpaid wages to a director I note there is a precondition and that is the company has either failed or is unable to pay. While attempts to remove SRSL from the Companies Register indicate a distinct possibility SRSL will not pay that is yet to occur. That said, and given my conclusion Mr Johnson is a person involved it follows, given the nature of the application, that should SRSL fail to pay by the date ordered I accept the application responsibility transfer to Mr Johnson personally.

[18] Finally there is the claim for interest. Interest is to reimburse someone for use, by others, of money that is theirs. There can be no doubt SRSL has, by failing to make payments properly due, continued to have use of money rightfully belonging to Mr Butler-Haddon. This is, I conclude, a circumstance in which interest should be payable especially in the absence of a contrary argument. The amount is determined under the Interest on Money Claims Act 2016 and calculated via a tool on the Ministry of Justice's website.

[19] Costs are also sought though these are limited to reimbursement of the Authority's filing fee. Given Mr Butler-Haddon's total success this too is payable.

Conclusion and Orders

[20] For the above reasons I conclude Mr Butler-Haddon is, as claimed, owed various amounts for unpaid wages and holiday pay. Interest and costs are also payable.

[21] As a result I make the following orders:

- a. The first respondent, Steel Reinforcing Specialists Limited, is to pay the applicant, Leigh Butler-Haddon, outstanding wages and holiday pay totalling \$3,440.00 (three thousand, four hundred and forty dollars) gross plus a further \$197.03 (one hundred and ninety seven dollars and three cents) being interest; and
- b. The first respondent shall pay Mr Butler-Haddon a further \$71.56 (seventy one dollars and fifty six cents) being a contribution toward costs; and

- c. The payments specified above are to be made no later than 4.00pm Tuesday 31 March 2020; and
- d. Should SRSL fail to make the payment in paragraph 21(a) by the ordered time Mr Johnson shall become personally liable pursuant to ss142W and 142Y of the Act and payment is to be made no later than 4.00pm Tuesday 7 April 2020.

[22] In closing I caution the respondents that failure to comply with the above orders may result in further consequences. Should such a failure be pursued in the Employment Court⁶ they potentially include the imposition of fines, the sequestration of property and/or imprisonment in Mr Johnson's case. Conversely a certificate of determination may be obtained and the matter pursued in the District Court. That might ultimately lead to liquidation of the company and/or bankruptcy for Mr Johnson.⁷

Michael Loftus
Member of the Employment Relations Authority

⁶ Sections 139 and 140 of the Employment Relations Act 2000

⁷ *Denyer v Peter Reynolds Mechanical Ltd t/a The Italian Job Service Centre* [2015] NZEmpC41 at [42] and *Broeks v Ross EmpC Auckland AC36A/09*, 11 November 2009 at [5]