

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2021] NZERA 48
3101672

BETWEEN	LUKE PARKER First Applicant
AND	CHRISTINA WEBB Second Applicant
AND	HEALTHY ORIGINZ LIMITED Respondent

Member of Authority:	Eleanor Robinson
Representatives:	Mireama Houra, counsel for the Applicants No appearance by Respondent
Investigation Meeting:	09 February 2021
Determination:	10 February 2021

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The First Applicant, Mr Luke Parker, claims arrears of wages and unjustifiable disadvantage in respect of the non-payment of salaries by the Respondent, Healthy Originz Limited (Healthy Originz).

[2] Mr Parker further claims that he is owed the sum of \$10,000.00 which he was required to provide as an investment loan.

[3] The Second Applicant, Ms Christina Webb, claims arrears of wages and unjustifiable disadvantage in respect of the non-payment of salaries.

The Authority's investigation

[4] 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. It has not recorded all evidence and submissions received.

Service of documents on the Respondent

[5] A Notice of Investigation Meeting was served on Healthy Originz, at the registered office on 27 January 2021, and personal service of Notice of Investigation Meeting was also effected at the address registered for service on the New Zealand Companies Office website on 29 January 2021, however Healthy Originz did not attend the investigation meeting.

Failure of Respondent to attend or be represented

[6] An Authority Officer attempted to make telephone contact with Mr William Steinle, sole director of Healthy Originz, on the day of the investigation meeting, however the telephone number had been disconnected.

[7] Healthy Originz did not attend and was not represented at the Investigation Meeting.

[8] For the reasons set out above I am satisfied that Healthy Originz had notice of the application and the date of the Investigation Meeting. Healthy Originz has not shown good cause for its failure to attend or to be represented.

[9] I have therefore proceeded pursuant to clause 12 Schedule 2 of the Employment Relations Act 2000 to act as fully as if Healthy Originz had attended or been represented at the investigation meeting.

Issues

[10] The issues requiring investigation are whether or not:

- Mr Parker is owed wages by Healthy Originz
- Mr Parker has been unjustifiably disadvantaged in his employment by Healthy Originz
- Mr Parker is owed the sum of \$10,000.00 in respect of an investment loan by Healthy Originz
- Ms Webb is owed wages by Healthy Originz

- Ms Webb has been unjustifiably disadvantaged in her employment by Healthy Originz.

Background

[11] Healthy Originz is a New Zealand based exporter and international distributor of Manuka honey products. The sole director is Mr William Steinle. Included in the list of shareholders for Healthy Originz are Mr Parker and Ms Webb. Mr Parker and Ms Webb are partners.

[12] Mr Parker and Ms Webb said they met Mr Steinle during the course of their employment in other businesses. Mr Steinle had spoken to them about joining Healthy Originz which was a business he was hoping to have established in New Zealand.

[13] Mr Parker said he understood the business model on which Healthy Originz was based having worked in sales and he saw the potential of the business so was keen to be involved.

[14] Ms Webb is Mr Parker's partner and met Mr Steinle through him, she was working as an international flight attendant, but was prepared to assist in the new business.

[15] On 16 December 2019 Mr Parker and Ms Webb sent a joint email to Mr Steinle, stating;

... We are just emailing you to let you know that we have both resigned from our current employment today. With end dates of 13/1/2020.

We would like to thank you so much for the opportunities and the doors you have opened for the two of us. We are most excited about our future with Healthy Originz and working alongside you growing our business to the fullest of its potential.

Mr Parker's Employment Agreement

[16] Mr Parker said he was offered employment by Mr Steinle as Chief Business Development Officer. The individual employment agreement provided to Mr Parker (the LP Employment Agreement) stated that it was between Healthy Originz Limited (the Employer) and Mr Parker, and contained the following clauses:

1. **Position, Place & Hours of Work.** Commencing as 1/2/2020 the Executive shall serve as the Chief Business Development Officer ("CBDO") of the Employer with all authority and corresponding responsibility of a CBDO of a company under New Zealand law, subject to the overall authority of the Employer's Board of Directors (the "Board" and each member thereof being a "Director") and the Employer's articles of incorporation, regulations, and other governing documents.
4. **Base salary.** The Employer agrees to pay or cause to be paid to Executive for Executive's services during the term of this Agreement an annual base salary at the gross rate prior to all taxes and other withholdings of

\$120,000 NZD. ... The Base Salary shall be payable monthly into Executive's nominated bank account in accordance with the Employer's customary payroll practices applicable to its execution.

5. Signing Bonus Prior to the execution of this Agreement by both parties, Executive shall be entitled to a purchase of 2 company shares in the nominal value gross amount prior to all taxes and withholdings of \$10,000 NZD which shall be payable in two equal instalments, the first of which as soon as possible following the allocation of the company shares to Executive, and the second of which at 24/5/2019. Notwithstanding the foregoing, Executive's right to the Signing Bonus shall be subject to forfeiture and repayment as provided in section 14.

14. Forfeiture. Notwithstanding any other provision to the contrary contained herein, the right of Executive or his estate or other beneficiaries shall forfeit all rights to receive or retain all payments and benefits provided, and shall reimburse the employer for all such payments and benefits received, pursuant to Sections 5 (Signing Bonus),

[17] The parties signed the **LP** Employment Agreement on 14 August 2019. Mr Parker explained that there had been a period of learning about Healthy Originz whilst still employed at his previous employment.

Ms Webb's Employment Agreement

[18] Ms Webb said she had been offered employment as Vice President of Marketing with Healthy Originz by Mr Steinle when she met him in November 2019. Ms Webb was provided with an individual employment agreement which she signed on 19 December 2019, and by Mr Steinle on behalf of Healthy Originz on 29 December 2019 (the CW Employment Agreement).

[19] The CW Employment Agreement contained the following clauses:

Position

The employee is being employed as the VP of Marketing.

Type of employment agreement

The employee will start working for the employer on 01/02/2020 and continue until either the employer or the employee ends this relationship.

Payment of wages

The employee will be paid a gross annual salary of \$90,000.00 which covers all the time worked.

[20] Mr Parker and Ms Webb commenced employment at Healthy Originz on 1 February 2020.

Payment enquiries

[21] Mr Parker emailed Mr Steinle on behalf of himself and Ms Webb on 10 February 2020 to check that Mr Steinle had all the information he required for the payroll stating that: "We need to know what day of the month monthly salaries are going to be paid as we need to set up

all our bill payments or make any necessary adjustments to current ones.” Mr Parker also pointed out that Mr Steinle would need their KiwiSaver details.

[22] Mr Steinle responded that same day, 10 February 2020, asking Mr Parker to forward the information which was usually provided for payroll in New Zealand. He stated:

Hi Luke,

Thank you for your email. Please send me all the information that you usually provide for Payroll in NZ, like KiwiSaver etc. I will forward it onto our accountant. The payroll is going to be set up via smartpayroll.co.nz. So you’ll receive your salaries to the bank accounts that I’m setting up for you with ANZ. You’ll receive it from Smartpayroll on behalf of Healthy Originz on 1st of each month.

[23] On 28 February 2020 Mr Parker emailed Mr Steinle advising him that since the first salary cycle was almost due, it was a priority to have all the arrangements in place. Mr Parker asked on which date the salary due to him and Ms Webb would be paid.

[24] Ms Webb emailed Mr Steinle on 29 February 2020 asking when the salary payments would be made and stating that she and Mr Parker had: “exhausted any savings and generosity from friends and family ...”.

[25] Mr Steinle responded on 1 March 2020 advising that: “the accountant is working on the returns that I intend to use to cover the salaries.”

[26] Mr Parker and Ms Webb said they received no salary payments either on 1 March 2020 or thereafter. Mr Parker said that when he had queried that with Mr Steinle he had been told that there was no money in the business account to pay himself or Ms Webb.

[27] As a result Mr Parker and Ms Webb considered their employment with Healthy Originz to be at an end and took active steps to obtain alternative employment.

[28] On 10 April 2020 Mr Steinle emailed Mr Parker to advise him that a Covid-19 wage subsidy had been approved for him and Ms Webb, he stated:

It’s a pleasure to let you know that Healthy Originz has been approved for Covid-19 Government support. Please provide your NZ bank account for the transfer of the wage subsidy. It will be transferred to you as soon as you receive this email.

[29] Mr Parker said he advised that he was declining the offer of the wage subsidy because he had already applied for the Covid-19 employee wage subsidy as an independent contractor and received his first payment in that capacity on 7 April 2020.

[30] Ms Webb stated she also received a similar email from Mr Steinle, and she also declined the offer.

[31] On 14 May 2020 Mr Parker and Ms Webb provided a formal letter of resignation to Healthy Originz.

Are Mr Parker and Ms Webb owed wages by Healthy Originz?

Statutory entitlement to wages

[32] The Wages Protection Act 1983 governs the payment of wages between an employer and an employee. In accordance with s 4: “an employer shall, when any wages become payable to a worker, pay the entire amount of those wages to that worker without deduction.”

[33] Mr Parker and Ms Webb’s claims were supported by documentation substantiating the work which they performed on behalf of Healthy Originz during the period for which they were claiming non-payment.

[34] I determine that Mr Parker and Ms Webb are entitled to payment of wages for the period from 1 February 2020 to 6 March 2020.

Have Mr Parker and Ms Webb been unjustifiably disadvantaged by Healthy Originz?

[35] Mr Parker and Ms Webb have raised unjustifiable personal grievances. Section 103 (1)(b) of the Act is applicable to disadvantage grievances and states:

That the employee’s employment (including any condition that survives termination of the employment), is or are or was (during employment that has since been terminated) affected to the employee’s disadvantage by some unjustifiable action by the employer;

[36] The elements of s103 (1) (b) are twofold:

- a. An unjustifiable action by the employer, which
- b. Affected the employee’s terms and conditions of employment, and this was to the employee’s disadvantage.

[37] Mr Parker and Ms Webb must therefore establish that there was some unjustifiable action by Healthy Originz which affected their terms and conditions of employment to their disadvantage.

[38] Healthy Originz failed to pay Mr Parker and Ms Webb the salaries agreed with them. This was an unjustifiable action on the part of Healthy Originz which resulted in their being disadvantaged in their employment.

[39] I determine that Mr Parker and Ms Webb were unjustifiably disadvantaged as a result of Healthy Originz having failed to make a salary payment to them in accordance with the terms of the employment agreements entered into by them with Healthy Originz.

Is Mr Parker is owed the sum of \$10,000.00 in respect of an investment loan by Healthy Originz?

[40] Mr Parker said that he was required to invest the sum of \$10,000.00 as an investment loan in Healthy Originz.

[41] An email from Mr Steinle to Mr Parker dated 13 August 2019 states that: “to get eligible to incorporate and run the company Healthy Originz Australia as a director on behalf of Healthy Originz ... you will need to join NZ mother company for at least two shares ... Once done, you will be appointed for the director position. “

[42] Mr Parker said he made the payments to purchase the shares in two tranches, the first tranche having been paid on 14 August 2019, the date both parties had signed the LP Employment Agreement, the second being completed by 15 August 2019 prior to the employment commencement date of 1 February 2020.

[43] The LP Employment Agreement sets out at clause 4 that prior to signing the agreement, Mr Parker would be entitled to purchase two company shares in Healthy Originz at a nominal value gross amount. This clause is headed : “Signing Bonus”.

[44] The email from Mr Steinle dated 13 August 2019 is regarding the conditions upon which Mr Parker could incorporate and run Healthy Originz Australia as a director of Healthy Originz. This is distinct from his employment as Chief Business Development Officer.

[45] I find that the LP Employment Agreement contains no requirement or prior condition upon which the employment was dependent. On the contrary clause 4 is entitled : “Signing Bonus” and the clause states that Mr Parker is entitled to purchase the shares, not that the purchase is mandatory.

[46] In addition Mr Parker’s evidence was that he saw the potential in Healthy Originz and therefore I conclude that he was happy at the outset of the relationship to purchase the shares as an investment in the business. I note the email from Mr Parker and Ms Webb dated 16

December 2019 which postdates the signing of the LP Employment Agreement by Mr Parker and which refers to their excitement about their future at Healthy Originz and to a joint investment: “in growing our business”.

[47] Having made the payments for two shares, Mr Parker was duly awarded them. Ms Webb was gifted shares also, and both currently retain the shares as noted on the Companies Office Register.

[48] I determine that Mr Parker is not owed the sum of \$10,000.00 in respect of an investment loan by Healthy Originz.

Remedies

Wage arrears

[49] Mr Parker and Ms Webb were not paid during their employment with Healthy Originz.

[50] **Healthy Originz is ordered to pay Mr Parker the sum of \$11,538.46 gross pursuant to s 4 of the Wages Protection Act 1983.**

[51] **Healthy Originz is ordered to pay Ms Webb the sum of \$8,653.85 pursuant to s 4 of the Wages Protection Act 1983.**

Statutory Holiday Entitlement

[52] Statutory holiday pay is calculated in accordance with the provisions of the Holidays Act 2003 (the HA).

[53] Mr Parker and Ms Webb had not completed 12 months continuous service at the termination of their employment with Healthy Originz on 6 March 2021 when their employment with Healthy Originz terminated.

[54] Employees who have not completed 12 months continuous employment are covered by s 23 of the HA which mandates that the employer must pay the employees holiday pay at the rate of 8% of the employee’s gross earnings.

[55] Mr Parker and Ms Webb said that they had not received annual holiday pay during their period of employment at Healthy Originz.

[56] **Healthy Originz is ordered to pay Mr Parker the sum of \$923.08 gross (calculated as \$11,538.46 gross x 8%) as holiday pay pursuant to s23 of the HA.**

[57] **Healthy Originz is ordered to pay Ms Webb the sum of \$692.31 gross (calculated as \$8,653.85 gross x 8%) as holiday pay pursuant to s23 of the HA.**

Interest

[58] Mr Parker and Ms Webb are also seeking interest on these sums owed to them.

[59] The Authority has the power to award interest if it thinks fit pursuant to clause 11 of the Second Schedule of the Act at the rate prescribed by the Judicature Act 1908, which is currently 5% per annum¹.

[60] I order that Healthy Originz pays interest on the outstanding sum from the date of this determination until payment is made in full in accordance with the Interest on Money Claims Act 2016.

Compensation

[61] I have found that Mr Parker and Ms Webb were disadvantaged in regard to the non-payment of their salaries by Healthy Originz.

[62] This caused them distress and concern both financially and personally.

[63] Healthy Originz is ordered to pay Mr Parker and Ms Webb the sum of \$2,000.00 each as compensation pursuant to s 123(1)(c)(i) of the Act.

Contribution

[64] I am required under s. 124 of the Act to consider the issue of any contribution that may influence the remedies awarded.

[65] I find that Mr Parker and Ms Webb did not contribute to the situation which resulted in the termination of their employment with Healthy Originz and there is to be no reduction in the remedies awarded.

Filing Fee

[66] Mr Parker is to be reimbursed the filing fee of \$71.56 by Healthy Originz.

Costs

[67] The investigation meeting was very brief and there were no submissions.

[68] I consider it appropriate to make a costs award of \$1,250.00 in the circumstances.

¹ Judicature (Prescribed Rate of Interest) Order 2011 (SR2011/177)

[69] Accordingly Healthy Originz is ordered to pay Mr Parker and Ms Webb the sum of \$1, 250,00 towards their legal costs.

Eleanor Robinson
Member of the Employment Relations Authority