

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2023] NZERA 203  
3179639

BETWEEN DONGMIN JUNG  
Applicant

AND FORT LANE PARTNERS  
LTD  
Respondent

Member of Authority: Peter Fuiava

Representatives: Applicant in person  
No appearance by the Respondent

Investigation Meeting: 21 April 2023

Determination: 26 April 2023

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**DETERMINATION OF THE AUTHORITY**

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**A. Fort Lane Partners Ltd (Fort Lane or the company) to pay Dongmin Jung the following amounts no later than 4 pm Friday 19 May 2023:**

- (i) \$4,800.79 in wage arrears;**
- (ii) \$956.34 in unpaid holiday pay;**
- (iii) interest on the total sum of \$5,757.13 from 1 April 2022 to the date of payment using the Ministry of Justice civil debt interest calculator to calculate interest;<sup>1</sup> and**
- (iv) reimbursement of the Authority filing fee of \$71.56.**

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<sup>1</sup> [www.justice.govt.nz/fines/civil-debt-interest-calculator](http://www.justice.govt.nz/fines/civil-debt-interest-calculator)

### **What is the employment relationship problem?**

[1] Dongmin Jung brings a wage arrears claim to the Authority for investigation and determination. Although there was no appearance by a representative for Fort Lane today, a Statement in Reply has been lodged with the Authority in which the company admits liability but disputes quantum. As such, the essential issue before me is how much should be awarded to Mr Jung by way of wage arrears, holiday pay, interest and reasonable expenses incurred.

### **What has been the Authority's investigation**

[2] A case management conference was held on 25 November 2022 which was attended by Mr Jung and Fort Lane's former representative Matt Young. Timetabling directions were made, the issues for investigation and determination clarified, and an investigation meeting set down for 20 February 2023. However, that meeting was adjourned as Mr Jung was unwell and because Mr Young wished to withdraw as Fort Lane's representative because of a perceived conflict of interest.

[3] There has been no further contact with Fort Lane but it has engaged with the process and I am satisfied that it is aware of the date of today's investigation meeting of which it has had ample notice. To grant a further adjournment of the meeting in which a Korean interpreter has been arranged and for which Mr Jung has had to take time off from his work to attend would not be fair or reasonable.

[4] The Authority is able to proceed with its investigation because of clause 12 of the Second Schedule to the Employment Relations Act 2000 (the Act) which enables it to act fully in the matter before it as if Fort Lane had duly attended or been represented.

[5] As permitted by s 174E of 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.

### **What are the relevant facts?**

[6] On 15 October 2021, Mr Jung signed his individual employment agreement with Fort Lane which recorded that his position was that of Senior Chef de Partie and was also full-time. He was expected to work a minimum of 37.5 hours per week and

he was to be paid \$27 per hour. Mr Jung's wages were to be electronically deposited into his bank account on a fortnightly basis. He understood that he would be working for the company from its fish n chip store in the Auckland CBD but he was instead asked to work from another location in Remuera which sold a variety of quick food dishes such as burgers, chips, hotdogs and ice cream. Under clause 3.1 of the employment agreement, the employer reserved the right to re-locate Mr Jung to any other premise within 35 kms of his assigned workplace.

### **How much is Mr Jung owed?**

[7] Mr Jung's Statement of Problem to the Authority records that he is seeking an award of \$10,000 against Fort Lane which comprises wage arrears, interest and redundancy pay. However, the difficulty with awarding redundancy pay is that clause 35.1 of Mr Jung's individual employment agreement expressly records that if his position was ever made redundant, no redundancy payment would be paid. As such, the redundancy component to the claim must be put to one side.

[8] Towards the last 33 days of Mr Jung's employment (27 February to 1 April 2022), the information and evidence before me establishes that he was not paid. During this period, it is noted that Mr Jung received two payslips but no monies were ever received. The first payslip covered the pay period of 27 February to 12 March 2022 and was for \$1,829.48. The second payslip was for the following fortnightly period and amounted to \$1,756.31. I find that Mr Jung received neither of these amounts. Additionally, he did not receive his wages for the last week of his employment ending 1 April 2022 which amounts to \$1,215. When Mr Jung was not paid, he was told by his employer not to return to work until the business could pay him. However, it never did and consequently Mr Jung did not return to work. Fortunately for him, he was able to secure alternative employment within a matter of days but not being paid for the previous five weeks left him in financial hardship.

[9] It was Mr Jung's evidence that he did not take any annual or holiday leave during the course of his employment with Fort Lane. As an employee of less than 12 months with the company, I find that Mr Jung was entitled to holiday pay upon termination of his employment calculated at eight per cent of his gross earnings.<sup>2</sup>

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<sup>2</sup> Holidays Act 2003, s 23.

Having regard to the Inland Revenue earnings information Mr Jung has provided to the Authority, he appears to have earned \$11,954.25 (gross). Eight percent of that amount is \$956.34 which Fort Lane will be ordered to pay.

**Should interest be awarded?**

[10] The Authority has the power under cl 11 of the Second Schedule to the Act to award interest if it thinks fit to do so. This is an appropriate case for the award of interest as Mr Jung has been deprived of the use of his wages and holiday pay for over a year. The total amount owed to him is \$5,757.13 (1,829.48 + 1,756.31 + 1,215 + 956.34) and Fort Lane is ordered to pay interest on this amount from 1 April 2022 until the date payment is made in full. Interest is to be calculated using the civil debt interest calculator noted above.

**What other reasonable expenses should be awarded?**

[11] Given the outcome of this investigation in which Mr Jung has been successful, it is appropriate that Fort Lane reimburse him the filing fee of \$71.56 which he paid in order to bring his employment relationship problem to the Authority.

Peter Fuiava  
Member of the Employment Relations Authority