

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 326
3216619

BETWEEN	CLAIRE WU AND ANTONY PEREIRA Applicants
AND	JFS GROUP LIMITED Respondent
AND	AMNESTY INTERNATIONAL AOTEAROA NEW ZEALAND Third Party

Member of Authority: Robin Arthur

Investigation: On the papers

Representatives: Applicants in person
No attendance for the Respondent
Candice Murphy, counsel for the third party

Date: 21 June 2023

DETERMINATION OF THE AUTHORITY

- A. The application by Claire Wu and Antony Pereira to join Amnesty International Aotearoa New Zealand as a controlling third party to these proceedings is declined.**
- B. JFS Group Limited owes arrears of wages to Ms Wu and Mr Pereira. Within 21 days of the date of this determination the company must pay the following sums to each applicant:**
- (i) \$3,455.20 due as four weeks' ordinary pay and**
 - (ii) \$1,235.23 due as holiday pay**
 - (iii) \$1,000 due as a travel allowance; and**

**(iv) Interest, calculated using the civil debt interest calculator,
on each of those three sums from 25 October 2022 to the date
of payment.**

[1] In 2022 Amnesty International Aotearoa New Zealand (Amnesty) contracted JFS Group Limited (JFSGL) to provide face-to-face fundraising services. As part of providing those services JFSGL employed Claire Wu and Antony Pereira as fundraisers from June 2022.

[2] On 19 October 2022 JFSGL terminated its employment of Ms Wu and Mr Pereira. This occurred after JFSGL director Matt Taylor had advised Amnesty representatives that his company had “cash flow” issues and difficulties meeting donor targets.

[3] In the following weeks Ms Wu and Mr Pereira contacted JFSGL operations manager Joanne Taylor several times about their final pay, comprising two weeks’ notice, two weeks’ wages, a promised but unpaid travel allowance and holiday pay. Ms Taylor’s responses said the company was working to get their final pay to them as soon as possible.

[4] Ms Wu and Mr Pereira lodged an application in the Authority after they were not paid and Ms Taylor did not respond to further messages from them. Their application was made using the statutory form for joining a controlling third party to a personal grievance, not the usual statement of problem. The Authority has dealt with the application on the basis of the substantive employment relationship identified, not the form in which it was lodged.¹

[5] Their application identified their employer as JFSGL and Amnesty as the third party. It said both JFSGL and Amnesty had denied responsibility for wages, a travel allowance and holiday pay owed to them.

The Authority investigation

[6] The Authority sent a copy of application to JFSGL and Amnesty. Amnesty lodged a statement in reply, denying it was a controlling third party and saying any wages due were the responsibility of JFSGL as the employer of Ms Wu and Mr Pereira.

¹ Employment Relations Act 2000, s 160(3).

JSFGL did not lodge a reply and has not otherwise responded or participated in any part of the Authority process.

[7] I am satisfied the Authority has made all necessary efforts to advise JSFGL of the claims against it and to give the company an opportunity to respond and participate in these proceedings. A copy of the application was delivered to JFSGL's registered office address and sent to email addresses previously used by Mr Taylor and Ms Taylor. Notice of a conference call to discuss the case was also sent to those email addresses. An Authority officer made follow-up calls to phone numbers of Mr Taylor and Ms Taylor. I was advised those calls were either not answered or, if answered, terminated after the officer identified herself.

[8] Ms Wu, Mr Pereira and counsel for Amnesty attended the conference call, held on 12 June. Calls made to Mr Taylor and Ms Taylor were not answered.

[9] Directions, dated 13 June, were sent to the parties after the conference call setting out the next steps that the Authority would take to deal with the application. Those directions included notice of intended orders and a further opportunity for JFSGL to provide information or comment by 20 June. The directions were delivered to JFSGL's registered office and, again, sent to email addresses known to have been used by Mr Taylor and Ms Taylor.

[10] No response was received from JFSGL by the appointed date. On 19 June an Authority Officer received an email from a person who advised they were a tenant at the street address given as JFSGL's registered office. The person had seen Authority correspondence sent to the address. The email message said Mr Taylor no longer lived or worked at the address and the tenants got a lot of mail addressed to him. It said they had no method of contacting him and did not know where he went.

[11] The Authority has met its statutory duty to serve notices to a company's registered address and has made further efforts by way of additional email messages and telephone calls.² The Authority is not required to do more where a company has not met its statutory duty to maintain a current registered office address.³

² Employment Relations Authority Regulations 2000, r 17.

³ Companies Act 1993, s 186 and s 187.

[12] Having given JFSGL an opportunity to respond and participate, it was appropriate to proceed to determine the issues arising from the application of Ms Wu and Mr Pereira.⁴ In doing so the Authority relies on information in their application form, documents submitted with the application (including copies of employment agreements, pay slips and messages to and from Ms Taylor) and in the statement in reply and documents lodged by Amnesty. Amnesty provided a copy of its contract with JFSGL and some correspondence with Mr Taylor. Further information provided by the applicants and Amnesty counsel during the 12 June telephone conference was included in the directions sent to the parties on 13 June, with the opportunity for comment from JFSGL by 20 June.

[13] 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.

Application to join Amnesty as a controlling third party is declined

[14] Section 103B of the Act sets two initial steps for an employee to apply to join a third party to the proceedings. The employee must have raised a personal grievance with their employer and applied to the Authority for resolution of that grievance.

[15] As confirmed by Ms Wu and Mr Pereira during the 12 June telephone conference, they had not raised a personal grievance with JFSGL over the termination of their employment. Rather, as shown in the copies of messages they provided of exchanges with Ms Taylor, they had pressed for the payment of their final wages. There were no messages showing they had contested the justification for the termination of their employment. Their application to the Authority, made more than four months later, simply raised the issue of their final wages and who was responsible for paying them what they were owed. It did not seek resolution of a personal grievance.

[16] Accordingly, the Authority could not grant the application to join Amnesty as a controlling party. Rather, it had to be declined. For that reason it was not necessary to address other reasons Amnesty gave in its statement in reply denying it exercised the

⁴ Employment Relations Act 2000, s 173(2), s 174D and Schedule 2, clause 12

alleged control or was otherwise responsible for decisions JFSGL made to end the employment of Ms Wu and Mr Pereira and not paying their final pay.

JFSGL owes arrears to Ms Wu and Mr Pereira

[17] It was clear from messages Ms Taylor sent Mr Pereira and Ms Wu on 25 October, 4 November and 11 November 2022 that JFSGL did not deny it owed them their “final pay”. In light of the lack of response from JFSGL there was no contest that this final pay comprised two weeks’ notice, two weeks wages, a travel allowance and holiday pay in the amounts they each claimed.

Orders to pay arrears of wages and holiday pay

[18] Accordingly, the intended orders notified in the Authority’s directions of 13 June 2023 are now confirmed.⁵ Within 21 days of the date of this determination JFSGL must pay to Ms Wu and to Mr Pereira the following sums:

- (i) \$3,455.20 for four weeks’ ordinary pay (comprising two weeks’ wages and two weeks’ notice);
- (ii) \$1,235.23 due as holiday pay; and
- (iii) \$1,000 due as a travel allowance.

Interest must be paid on the amounts due

[19] The Authority also has the power to order interest in any matter involving the recovery of any money, which includes payment of arrears of wages and holiday pay due to a worker at the end of their employment.⁶

[20] Such an order was appropriate in this case where there was no contest that the money was due. On 25 October 2022 a message from Ms Taylor thanked Mr Pereira and Ms Wu for their work and said the company was working to get their final pay to them as soon as possible. The date of 25 October was therefore an appropriate starting date for the payment of interest, ending on the date sums due to Mr Pereira and Ms Wu are paid in full. Interest is to be calculated using the civil interest debt calculator.⁷

⁵ Employment Relations Act 2000, s 131.

⁶ Employment Relations Act 2000, Schedule 2, clause 11.

⁷ www.justice.govt.nz/fines/civil-debt-interest-calculator.

Further remedies available

[21] Further remedies may be available to Ms Wu and Mr Pereira in the event that JFSGGL did not pay the arrears and interest ordered by the Authority. Under s 142Y and s 142W of the Act, workers who are not paid wages and other money owed to them by a company may seek leave to personally recover that amount from a director or manager of a company.

Robin Arthur
Member of the Employment Relations Authority