

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2023] NZERA 521  
3200399

BETWEEN           SARIKA BATTA  
Applicant

AND                 AUCKLAND CATERING  
LIMITED  
First Respondent

AND                 RAJESH RAO  
Second Respondent

Member of Authority:     Rachel Larner

Representatives:         Applicant in person  
No appearance by Respondents

Investigation Meeting:    11 September 2023 at Auckland

Oral Determination:      11 September 2023

Written Record Issued:    12 September 2023

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**ORAL DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     The Applicant, Ms Sarika Batta, entered into a Record of Settlement (“RoS”) under s 149 of the Employment Relations Act 2000 (“the Act”) with Auckland Catering Limited (the First Respondent) and Mr Rajesh Rao (the Second Respondent).

[2]     The RoS was signed by the parties and a mediator from Mediation Services on 2 September 2020.

[3] Clause 3 of the RoS required the Respondents to jointly and severally pay Ms Batta specific amounts by way of direct credit to her nominated bank account, by specified dates. However, more than three years after the RoS was signed by the parties, the Respondents have still not made all of the required payments to Ms Balla.

[4] Ms Batta is still owed a final payment of \$1,600, which was due to be paid to her by 1 January 2022 plus unpaid interest of \$533 for the 608 days over the period 1 January 2022 to 31 August 2023.

[5] Ms Batta sought a compliance order to compel the Respondents to pay her the money she is owed.

### **The Authority's investigation**

[6] The Statement of Problem ("SoP") was served on the First Respondent at its registered address for service by track and trace courier on 13 December 2022. It was signed for by "*Abduo Mohamed*".

[7] The Authority emailed a copy of the SoP to both Respondents on 5 December 2022 to Mr Rao's email address.

[8] Mr Rao's email address is the same as that used by Rajwadi Indian Restaurant in Dominion Rd Auckland, which was the Rao family restaurant the First Respondent owned and operated, and which the Second Respondent ran and managed. It was also the restaurant where Ms Batta worked and where her wage arrears claim had arisen from.

[9] The Respondents' Statement in Reply ("SiR") was therefore due by 8 January 2023, but nothing was lodged.

[10] Mr Rao emailed the Authority on 14 February 2023 and said his restaurant was closed and he had been overseas for the last couple of months. He asked Ms Batta to provide him with her bank account details and the amount that was still to be paid. No SiR was lodged and no money was paid.

[11] On 9 March 2023 Mr Rao emailed the Authority and again said (among other things) that he was still overseas but he would try and pay Ms Batta "*as soon as possible*". No SiR was lodged and no money was paid to Ms Batta.

[12] The Respondents were advised in an email from the Authority on 9 March 2023 that they needed to seek leave to lodge a SiR out of time, if they wanted to defend Ms Batta's application for a compliance order.

[13] The Authority also wrote to the Respondents again on 27 May 2023 identifying that the SoP had been served on the First Respondent at its registered address for service on 13 December 2022 and on the Second Respondent Mr Rao by email on 16 February 2023.

[14] The SiR from the First Respondent had been due on 8 January 2023 and for the Second Respondent had been due on 2 March 2023. Neither Respondent had lodged a SiR so they were again told they would seek leave to lodge a SiR out of time if they wanted to defend Ms Batta's claims.

[15] On 22 August 2023 the Authority issued directions which included an order that substituted service could occur on the Second Respondent at the First Respondent's registered address for service, which was the same address the Rajwadi restaurant operated from. This was considered appropriate as the restaurant was a family business for the Rao family.

[16] This matter was set down for an investigation meeting to be held on Monday 11 September 2023. The investigation was initially going to be conducted by telephone, because at that time Ms Batta and Mr Rao, who was also representing the First Respondent, were overseas.

[17] A Notice of Investigation Meeting ("Notice of IM") was served on the Respondents by email to Mr Rao, at the email address he had used to communicate with the Authority. The Authority also engaged a process server to serve a copy of the Notice of IM on the Respondents at the First Respondent's registered address for service.

[18] Service of the Notice of IM on the Respondents occurred by a process server at 12.04 pm on 30 August 2023. The process server advised the Authority that the business premises was closed, so the service documents were affixed to the front door of the First Respondent's registered address for service. Photographs of that were taken and have been provided to the Authority.

[19] On 22 August 2023 Ms Batta confirmed in writing to the Authority and the Respondents the amount she sought to be paid and explained how that had been calculated. She also provided

her bank account details so the Respondents could easily pay her the money she was owed. However, no payment has been made.

[20] The method of the investigation meeting was converted by the Authority from a telephone investigation to an in-person investigation meeting, after Ms Batta advised she was now back in Auckland.

[21] An updated Notice of IM was emailed to the Respondents. They were also given permission to join the investigation meeting by Zoom, to enable them to participate given they were apparently overseas.

[22] Neither Respondents attended the investigation meeting. The Authority started the investigation meeting 15 minutes late to give the Respondents extra time to attend. An Authority Officer also emailed Mr Rao prior to the investigation meeting asking him to log in to the investigation meeting by Zoom using the link he had been sent in the updated Notice of IM.

[23] The Authority Officer also called the First Respondent on the phone number on Rajwadi restaurant's website and the phone number the Authority had been given for Mr Rao. Neither of the Respondents' phone numbers had voicemails associated with them.

[24] The Authority was satisfied that the Respondents were aware of the investigation meeting, but elected not to participate in it, and that they have not paid Ms Batta anything since she lodged her compliance order application.

[25] Ms Batta attended the investigation meeting in Auckland on 11 September 2023 and was questioned by the Authority about her claim.

[26] The evidence Ms Batta gave under affirmation to the Authority established that there had clearly been a breach of employment standards, as defined in s 5 of the Act, regarding her employment by the First Respondent, as she was only paid \$10 per hour.

[27] Based on Ms Batta's evidence, Mr Rao was the manager who allocated work to employees and he was responsible of paying them. Ms Batta gave evidence under affirmation about how the Respondents had deliberately exploited vulnerable migrant workers and how they had provided fraudulent information to Inland Revenue Department ("IRD") about how many hours employees had worked and what they had been paid.

[28] These are serious allegations that Immigration New Zealand and IRD may wish to investigate, as there was credible evidence given to the Authority that suggested Mr Rao and his family may be operating a business model that is based around the exploitation of vulnerable workers and that Ms Batta is not the only person who has been affected.

[29] Ms Batta also spoke about the stress and distress the Respondents' actions had caused her over many years, due to blatant breaches of employment standards and of the RoS.

[30] An oral determination was issued on the day of the investigation meeting, so this written determination confirms that oral determination.

### **The issues**

[31] The following issues are to be determined:

- (a) Has Ms Batta been paid all of the money she is owed under the Record of Settlement?
- (b) If not, what is she still owed?
- (c) Should a compliance order be issued?
- (d) Should interest be awarded?
- (e) What costs and disbursements should be awarded?

### **Has Ms Batta been paid all of the money she was owed under the Record of Settlement?**

[32] Ms Batta's evidence about the amounts she was owed by the Respondents was uncontested.

[33] Ms Batta is still owed the final payment of \$1,600 which was due to have been paid to her by on 1 January 2022 along with the interest under the RoS that the Respondents were required to pay for late payments.

### **What is Ms Batta owed?**

[34] Ms Batta is owed a total of \$2,143.52 consisting of \$1,600 plus interest of \$543.52 from 1 January 2022 to the date of this written determination (12 September 2023). She is also owed ongoing interest under clause 3(c) of the RoS until she has been paid all of the money she is owed.

### **Should a compliance order be issued?**

[35] Section 137 of the Act gives the Authority the discretion to make a compliance order in a range of different situations, including regarding if s 149 Record of Settlement which has not been complied with.

[36] Although over a period of many years Mr Rao continuously led Ms Batta to believe that he will pay her all of the money she is owed, that has still not been paid.

[37] The Authority considered that it was unlikely Ms Batta would be paid if a compliance order was not issued, as the Respondents have had every opportunity to do so prior to the investigation meeting today.

### **What are the terms of the compliance order?**

[38] Within 14 days of the date of this written determination, Auckland Catering Limited and Rajesh Rao are ordered to fully comply with clause 3 of the Record of Settlement signed by the parties and a mediator from Mediation Services on 2 September 2020.

[39] This compliance order therefore requires the Respondents jointly and severally to pay Ms Batta by no later than 26 September 2023:

- (a) \$1,600 without deduction;
- (b) \$543.52 interest for the period 1 January 2022 to 12 September 2023, as per the RoS; and
- (c) Interest as per clause 3(c) of the RoS per day from 13 September 2023 until the money and interest Ms Batta is owed has been paid to her in full.

[40] Under the RoS the parties signed, both Respondents are jointly and severally liable for the money and interest Ms Batta is owed.

### **Warnings about breaches of this compliance order**

[41] If the Respondents fail to comply with this compliance order, Ms Batta may apply under s 138(6) of the Act to the Employment Court to exercise its powers under s 140(6) of the Act.

[42] The Courts powers include (among other things) the ability to order imprisonment for a period of up to three months, impose a fine up to a maximum of \$40,000, or order that property be sequestered.

[43] Any breach of the Authority's compliance order must therefore be pursued by Ms Batta in the Employment Court.

**Should interest be awarded?**

[44] Clause 3(c) of the RoS provided for the Respondents to pay interest at a specified daily rate on any late payments and interest payments.

[45] It is therefore appropriate that the Respondents be held to comply with that requirement, with interest to be calculated in accordance with clause 3(c) in the RoS the parties signed. Interest therefore continues to accrue under that clause from 13 September 2023 until Ms Batta has been paid everything she is owed.

**What costs should be awarded?**

[46] Because Ms Batta represented herself, there is no issue as to costs. However, as the successful party Ms Batta is entitled to reimbursement of her filing fee of \$71.55.

[47] The Respondents are jointly and severally liable to pay Ms Batta \$71.55 to reimburse her filing fee in respect of this compliance order application. This amount is to be paid within 14 days of the date of this determination.

**Orders**

[48] Within 14 days of the date of this determination, the Respondents are jointly and severally ordered to:

- (a) Comply with clause 3 of the Record of Settlement the parties signed under s 149 of the Act by paying Ms Batta:
  - (i) \$1,600 as required by clause 3(a) of the Record of Settlement;
  - (ii) Interest of \$543.52 up to the date of this written determination, as required by clause 3(c) of the Record of Settlement; and
  - (iii) Interest from 13 September 2023 onwards until the full amounts Ms Batta is owed has been paid to her.

- (b) \$71.55 to reimburse her filing fee.

Rachel Larmer  
Member of the Employment Relations Authority