

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 75
3165744

BETWEEN	SYED MOHAMMAD ABBAS KAZMI Applicant
AND	TETRAD HOLDINGS LIMITED First Respondent
AND	SAJID SHAIKH Second Respondent

Member of Authority: Sarah Blick

Representatives: Syed Mohammad Abbas Kazmi, in person
Sajid Shaikh for the first respondent and in person

Investigation Meeting: 9 February 2023 by audio-visual link

Submissions received: At the investigation meeting

Determination: 20 February 2023

DETERMINATION OF THE AUTHORITY

What is the employment relationship problem?

[1] The applicant Syed Mohammad Abbas Kazmi worked for the first respondent Tetrad Holdings Limited (Tetrad) between 2018 and 2020. Mr Kazmi says he was paid sporadically during his employment and he is owed over eight weeks wages. He also claims to be owed annual holiday pay not paid out at the end of his employment. Mr Kazmi further says Tetrad should pay him back a loan he lent to it during his employment.

[2] The respondents accept Tetrad owes Mr Kazmi arrears of wages and holiday pay but say Tetrad is no longer trading and cannot afford to pay the arrears.

[3] Tetrad's director Sajid Shaikh was named as a respondent on the basis he is a person involved in employment standards breaches. Mr Shaikh acknowledges he is a person involved but asks the Authority not to grant Mr Kazmi leave to recover arrears of wages and holiday pay against him personally in the event Tetrad cannot pay the arrears.

[4] Tetrad acknowledges Mr Kazmi provided it with a loan which has not been paid back.

What has the Authority's process been?

[5] The parties consented to the investigation meeting being held via audio visual link. Mr Kazmi and Mr Shaikh attended and answered questions under affirmation from the Authority, had the opportunity to ask each other questions and make oral statements regarding matters at issue.

[6] As permitted by s 174E of the Employment Relations Act (the Act), this determination does not record all the evidence and submissions received, and fully considered, during the Authority's investigation but has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter, and specified orders made as a result.

What are the issues?

- [7] The following are the issues for investigation and determination:
- a. Has Tetrad failed to pay wages and holiday pay to Mr Kazmi and if so, should Tetrad be ordered to pay them?
 - b. Should the Authority order Tetrad to repay the loan Mr Kazmi gave it?
 - c. Is Mr Shaikh a person involved in employment standards breaches under s 142W and should leave be granted to recover wages or other money due under s 142Y of the Act?

What is the background?

[8] Tetrad operated a business specialising in manufacturing and supplying chilled dairy products to retailers.

[9] It is common ground Mr Kazmi worked for Tetrad between 24 August 2018 and 17 February 2020 as a business and IT manager. Mr Kazmi's hours of work were 40 hours per week and his hourly rate \$27.00 per hour under his employment agreement.

[10] Mr Kazmi says during his employment Tetrad failed to pay his wages on time on a number of occasions. Mr Kazmi says he constantly reminded Mr Shaikh of the money owed but Mr Shaikh did not take him seriously. Mr Kazmi took steps to try and recover his wages including having a mutual friend mediate between him and Mr Shaikh, at which time Mr Shaikh agreed to pay the wages in a month's time. Mr Kazmi says, however, when the time came to pay, Mr Shaikh stopped answering his phone calls.

[11] Tetrad accepts it did not always pay Mr Kazmi his wages in accordance with his employment agreement due to its cashflow issues. Although Tetrad has not checked its records to confirm what amount in wages and holiday pay arrears is owing to Mr Kazmi, it does not dispute the amounts he claims.

[12] Mr Kazmi says he loaned Tetrad \$6,500.00 on 7 June 2019. Tetrad and Mr Shaikh acknowledges this loan was received and has not been paid back. I understand from the evidence the reason for the loan was to assist in resolving a court matter involving Tetrad.

[13] Mr Shaikh says as Tetrad's director he took care of employee wages and accepts payments to Mr Kazmi were "missed out" due to cashflow problems Tetrad experienced. Despite three years having elapsed since Mr Kazmi resigned from his role, Mr Shaikh has made no attempt to verify what amounts are owing to Mr Kazmi, nor has Tetrad made any payments to Mr Kazmi. Mr Shaikh does not deny the amounts Mr Kazmi seeks, nor does he confirm they are what is owing.

[14] In November 2021 Tetrad received notice from the landlord of its premises advising the premises appeared to have been abandoned. The landlord outlined it had

allowed goods and equipment to be stored subject to the continued payment of outgoings for the premises which had not occurred. The letter stated Tetrad had not complied with “make good and reinstatement” obligations under the lease and the landlord had arranged for the locks to be changed. Mr Shaikh says despite its attempts, Tetrad was unable to find another premises or engage other manufacturers to make its products. Mr Shaikh says two of its subtenants at the premises defaulted on rent payments, leaving Tetrad to pay rent arrears in the amount of \$250,000. In the face of this Mr Shaikh says Tetrad was not able keep its business running and was pushed out of the premises in November 2021.

[15] Tetrad says currently its main debt is around \$232,000 with a bank, and that it has been working with the bank since 2021 to find a solution to discharge this debt. Mr Shaikh says while the bank has taken control of some equipment, Tetrad still has some assets in the form of plant and machinery it used to run its manufacturing operations. Tetrad says it also owes GST amounts to Inland Revenue.

[16] Mr Shaikh says Tetrad does not plan to liquidate if it is able to settle its debt with the bank. His goal is to revive Tetrad and operate on a much smaller scale.

[17] Mr Shaikh acknowledges he is a person involved in employment standards breaches but asks the Authority to consider the difficulties he has been through over recent years, including the effect the COVID-19 pandemic has had on his business.

[18] Finally, Mr Shaikh says he suggested to Mr Kazmi that he should go out and collect money owing from Tetrad’s debtors, including from supermarkets. Unsurprisingly Mr Kazmi did not take up this offer, given they were not his debts to chase and because he was busy in new employment.

Has Tetrad failed to pay wages and holiday pay to Mr Kazmi and if so, should Tetrad be ordered to pay them?

Arrears of wages

[19] Having heard from the parties, I accept Mr Kazmi is owed arrears of wages for eight weeks and four days worked at \$27.00 per hour. While Mr Kazmi has provided a net figure for the arrears, the Authority has calculated the gross amount owing based on Mr Kazmi’s 40 hour working week. The arrears owing are \$9,504.00 (gross).

Annual holiday pay

[20] Mr Kazmi says he was entitled to six weeks annual holiday pay in total, took two weeks of that leave, and is entitled to the balance of four weeks annual holiday pay. Based on his period of employment, Mr Kazmi first reached his entitlement to four weeks annual holiday on 24 August 2019. He then continued to work for around six months until 20 February 2020. As his employment came to an end before a further four-week entitlement had arisen, on termination he was entitled to receive 8% of his gross earnings since his last entitlement.

[21] Accordingly, as Mr Kazmi used two weeks of annual holidays, based on the information available I find Tetrad owes Mr Kazmi the remainder of his entitlement, being two weeks annual holiday pay amounting to \$2,160.00 (gross).¹ Further, he is entitled to be paid 8% of his gross earnings since his last entitlement arose on 24 August 2019. Based on the information available, this amounts to \$2,419.00 (gross).² In total, I find the arrears of holiday pay owing are \$4,579.00 (gross).

Should the Authority order Tetrad to repay the loan Mr Kazmi gave Tetrad?

[22] Mr Kazmi's claim for repayment of the \$6,500 loan to Tetrad can be determined by the Authority if the payment arose during the course of an employment relationship and in the work context.³ If it falls within the definition of an employment relationship then the Authority has exclusive jurisdiction to consider that aspect of the claim.⁴

[23] I consider the loan payment would not have come about but for the employment relationship and the loan was connected with the business because the reason for loan was to assist in resolving a court matter involving it. In the circumstances I am satisfied the loan payment was sufficiently within the work context and the employment relationship that it falls within the Authority's jurisdiction and is therefore a matter I can determine. I find the loan of \$6,500 is due and owing to Mr Kazmi.

¹ Calculated at Mr Kazmi's ordinary weekly pay this is 2 x 40 hours at \$27.00 = \$2,160.00 (gross).

² Calculated in accordance with ss 25 and 26 of the Holidays Act 2003 as follows: 26 weeks x 40 hours = 1040 hours, 1040 hours x \$27.00 = \$28,080, \$28,080.00 + \$2,160.00 = \$30,240, 8% of which is \$2,419.00.

³ *FMV v TZB* [2021] NZSC 102 at [93].

⁴ Employment Relations Act 2000, s 161(1).

Is Mr Shaikh a person involved in employment standards breaches under s 142W and should leave be granted to recover wages or other money due under s 142Y of the Act?

[24] I am satisfied Tetrad has breached employment standards as Mr Kazmi's employer. The breaches include failing to pay Ms Kazmi's wages when payable as required under s 4 of the Wages Protection Act 1983, and failing to pay annual holiday pay on termination as required under s 25 to 27 of the Holidays Act 2003.

[25] I find Mr Shaikh is a person involved in these breaches in terms of the requirements in s 142W of the Act. At the relevant times Mr Shaikh was the sole director and a shareholder of Tetrad. He was effectively Tetrad's mind and controller who decided what Tetrad did and did not do in relation to the employment of employees and their wages. Mr Shaikh had personal knowledge and direct involvement in the breaches that have occurred.

[26] Although I accept Mr Shaikh's evidence that he has experienced difficulties over the last few years, I am satisfied leave should be granted to recover the arrears of wages and holiday pay owing to Mr Kazmi.

[27] For the avoidance of doubt, I see no basis for finding the default in repayment of the loan was a breach of an employment standard. Accordingly, I do not grant Mr Kazmi leave to recover the loan amount from Mr Shaikh personally.

What are my orders?

[28] Under s 131 of the Act, Tetrad Holdings Limited is ordered to pay Syed Mohammad Abbas Kazmi the following amounts within 28 days of the date of this determination:

- a. \$9,504.00 in arrears of wages (gross);
- b. \$4,579.00 in unpaid annual holiday pay (gross);
- c. \$6,500.00 being the loan amount.

[29] In accordance with s 142W of the Act, Mr Shaikh is a person involved in Tetrad's breaches of employment standards, and Mr Kazmi is granted leave under s 142Y of the Act to recover from Mr Shaikh personally the arrears of wages and annual holiday pay to the extent Tetrad is unable to pay those amounts.

[30] Tetrad Holdings Limited and Sajid Shaikh are jointly and severally liable and ordered to pay the Authority filing fee of \$71.56 to Mr Kazmi within 28 days of the date of this determination.

Sarah Blick
Member of the Employment Relations Authority