

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
OTAUTAHI ROHE**

[2024] NZERA 228
3254140

BETWEEN	CANTER VALLEY PROCESSORS LIMITED Applicant
AND	JASON HOFFMAN Respondent

Member of Authority:	David G Beck
Representatives:	Lachlan Dick, for the Applicant No appearance for the Respondent
Investigation Meeting:	12 April 2024 by audiovisual link
Submissions Received:	12 April from the Applicant None from the Respondent
Date of Determination:	19 April 2024

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Canter Valley Processors Limited (Canter Valley), is a well-established North Canterbury based, company engaged in producing and supplying poultry products to the restaurant, food services and retail markets in New Zealand and for export. Canter Valley employs around twenty-seven workers.

[2] By way of an individual employment agreement signed by the parties on 19 June 2023, Jason Hoffman was employed as a farm hand. Mr Hoffman commenced work on 15

June 2023 but left after working for two days without giving notice. Mr Hoffman subsequently failed to respond to requests about his absence and on 16 August 2023, Canter Valley ended his employment due to abandonment.

[3] Documentation provided by Canter Valley disclosed Mr Hoffmann was paid for the two days he worked but then for the next pay period ending 12 July, he was mistakenly paid for a week he did not attend work in the amount of \$809.40 (after tax). Canter Valley says the mistake was a human error due to a temporary pay clerk confusing Mr Hoffman with an existing worker.

[4] The payroll error was promptly brought to Mr Hoffmann's attention by email of 17 July 2023, identifying the net amount overpaid and Canter Valley provided their bank account details to Mr Hoffman to address the overpayment. On the 18 July by email, Mr Hoffman responded expressing concern that the overpayment had been made and indicated he would contact the Inland Revenue Department. The Operations Manager of Canter Valley then wrote to Mr Hoffmann on 19 July, indicating that he had acknowledged receipt of the overpayment, that Canter Valley had reversed "the pay record and corrected our PAYE return to IRD to exclude your pay". The letter then noted the error had not been due to actions of Mr Hoffman but "you are still required by law to pay this amount back to us."

[5] When the overpayment was not addressed, Canter Valley sent a further request letter to Mr Hoffman on 3 August 2023 indicating if the amount cited was not paid by 4 August, they would institute recovery proceedings. As Mr Hoffman did not address the request, Canter Valley made an application to the Authority on 2 October 2023 seeking an order that Mr Hoffman address the overpayment.

[6] Mr Hoffman did not provide a response to Canter Valley's application to the Authority but at a case management teleconference I convened on 18 January 2024, Lachlan Dick, Canter Valley's sole director, indicated Mr Hoffman had assured him he would address the overpayment by instalments and an initial payment of \$100 had been made on 14 January 2024.

[7] Mr Hoffman, despite being in email contact with the Authority, did not attend the case management teleconference and in an email afterwards of 22 January, the Authority asked if Mr Hoffman was willing to attend mediation. In a response of the same day, Mr Hoffman answered in the negative and then in a further email to the Authority of 22 January, he indicated: “Goodbye they got my payment so can pay what od [sic]”.

[8] In an email of 2 February 2024, Mr Dick confirmed only one payment had been made (the \$100) and Canter Valley wanted the matter to be set down for an investigation meeting.

The Authority’s investigation

[9] Pursuant to s 174E of the Act, I make findings of fact and law and outline conclusions to resolve the disputed issues and make orders but I do not record all evidence.

[10] At the investigation meeting I only heard evidence from Mr Dick as Mr Hoffman did not participate. An Authority officer rang Mr Hoffman on the day of the investigation meeting and he indicated he would not take part. I am satisfied that Mr Hoffman received due notice of the investigation meeting but he chose not to attend or provide his perspective of the situation.

Assessment/the law

[11] As Mr Hoffman did not participate in my investigation, the only evidence I have of his stance on the matters in dispute are text and email exchanges (and a copy of a bank statement evidences the \$100 payment made by Mr Hoffman). The content of communications displayed an unwillingness of Mr Hoffman, to address the overpayment he clearly had acknowledged. The evidence also showed the overpayment was a genuine mistake and that this was brought promptly to Mr Hoffman’s attention.

[12] Due to the fleeting period of Mr Hoffman’s employment Canter Valley was unable to utilise section 6 of the Wages Protection Act that allows recovery of overpayments “in

certain circumstances” as this provision is confined to recovery utilising deductions from wages subsequently paid. ¹

[13] However, reinforced by clarification of the Authority’s general reach to resolve “a problem that relates to or arises from an employment relationship” by the Supreme Court in *FMV v TZB* ² and s 161(1) of the Act, a claim for an employer seeking reimbursement of an overpayment of wages where the employment has ended, is within the Authority’s remit.

[14] In the circumstances, as the overpayment was a genuine mistake the Authority considers it reasonable to direct Mr Hoffman to reimburse Canter Valley the amount of \$709.40 overpaid wages. I make the point that should Mr Hoffman not resolve the overpayment as directed below, then Canter Valley can seek a compliance order and if such is not observed then there is an ability to seek a further compliance order in the Employment Court where sanctions including a fine not exceeding \$40,000 can be imposed. ³

Orders

[15] I order that Jason Hoffman must pay Canter Valley Processors Limited \$709.40 within one month of the issuing of this determination.

Costs

[16] Costs are not at issue as the applicant company was self-represented but I direct Mr Hoffman to pay Canter Valley Processors Limited \$71.44 being the Authority filing fee.

David G Beck
Member of the Employment Relations Authority

¹ Section 6(2) Wages Protection Act 1983.

² *FMV v TZB* [2021] NZSC 102 and section 161 - Jurisdiction, Employment Relations Act 2000.

³ Section 140(6) Employment Relations Act 2000.