

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 637
3298279

	BETWEEN	EDUARDO CAMPOS Applicant
	AND	MUSADDIQ AQEEL T/A PAINTERS INK Respondent
Member of Authority:	Eleanor Robinson	
Representatives:	Applicant in Person No appearance for the Respondent	
Investigation Meeting:	21 October 2024 by AVL	
Submissions and/or further evidence	21 October 2024 from the Applicant	
Determination:	22 October 2024	

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Eduardo Campos, claims that he is owed monies by the Respondent, Musaddiq Aqeel trading as Painters Ink.

The Authority's investigation

[2] The Authority received written evidence and oral evidence under affirmation from the Applicant, Mr Campos.

[3] Mr Aqeel was served by email and courier throughout the Authority's process but chose not to engage and did not join the Investigation Meeting. The start of the Investigation Meeting was delayed a short time to give Mr Aqeel time to join, however he did not do so either at the start or at any time during its duration.

[4] I was satisfied that no good cause had been shown for Mr Aqeel's failure to attend and I consequently proceeded with the Investigation Meeting pursuant to clause 12 of Schedule 2 of the Act.

[5] 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.

Issues

[6] The issue requiring investigation is whether or not Mr Campos is owed monies by Mr Aqeel.

Background

[7] Mr Campos came to New Zealand from Brazil to study English. He obtained employment with Painters Ink in order to assist him with his living expenses whilst he studied. He commenced work at the end of May 2023, initially on an hourly wage of \$25.00 for a 20 hour working week. After his student visa was confirmed, his hourly rate increased to \$29.66 and he worked 40 hours a week.

[8] Mr Campos was provided with an independent employment agreement which he and Mr Aqeel signed on 26 June 2023 (the Employment Agreement).

[9] The Employment Agreement described Mr Campos as a Full-Time Permanent Painting Labourer, working at least 30 hours a week at a rate of \$29.66 gross per hour. Mr Campos said he was paid sometimes in cash, and sometimes by bank transfer into his bank account.

[10] Mr Campos said he had administrative and some payroll experience in Brazil prior to arriving in New Zealand, and he became responsible for completing and submitting the timesheets for his colleagues in the painting team.

[11] No payslips were provided by Mr Aqeel but Mr Campos said he was able to work out from what he was paid and the taxation information provided online that his wage payments were correct.

[12] Mr Campos said that although the relationship proceeded without any issues at first, he started to experience delays in payment. The first delay he experienced was during the period 18 to 27 September 2023. There were other delays after that date. He said the other employees in the Painters Ink painting team were also not being paid.

[13] Mr Campos said he repeatedly contacted Mr Aqeel to ask about the payment delay, but Mr Aqeel provided various reasons why payment had been delayed, these included complaints from the company customers about poor workmanship and consequent issues on their payment of his invoices, and including his blaming the payroll provider.

[14] Mr Campos said he called the payroll provider himself and queried the delay in salary payment, asking if it was experiencing any issues. However the payroll provider denied this and its customer service consultant told him that if Mr Aqeel was informing him that the delay was its fault, that was totally untrue.

[15] Mr Campos said that by mid-November 2023 he was owed 160 hours in unpaid wages and he had realised that Mr Aqeel had no intention to pay him. As a result, he stopped working for Painters Ink, and started to look for alternative employment.

[16] Mr Campos said that on 15 December 2023 he text messaged Mr Aqeel and asked:

Hi Musa. How are you? Do you have any news about the payment? I know that probably you are still waiting. But is it possible to pay at least part of it, like 1,300.00 (50 hours) It will make a huge difference at this moment.

[17] In response Mr Aqeel replied that he would try to make some payments to people, including Mr Campos, but his business was struggling and: "I actually don't have money myself or I'd pay you guys straight away."

[18] On 21 November 2023 Mr Campos said he sent a report of exploitation to the Ministry of Business, Innovation and Employment (MBIE) following which he was granted a Migration Exploitation Work Visa (MEPV) and could start employment with another employer.

[19] In April 2024 Mr Campos again contacted Mr Aqeel to request payment:

EC: Mi Musa. Eduardo here. The Ministry of Business got in contact with me asking me about payment issues. I couldn't say that you were paying me. ... Can you please pay me what you owe me. ...

MA; Hey Eduardo We are not working as work is very slow. I am struggling a lot myself. Barely surviving ...I am going overseas ... and I have money invested there which I am selling as we speak. I will leave end of month And be back in 2 weeks with the fund to pay everyone's outstanding. ...

...

EC: ...I am struggling working here and there, barely paying for my food. ...
If you can pay me 2,000 now, I can consider this as half paid ...

MA: Eduardo I wish I had 2000 right now.

[20] Mr Campos said he received no payment from Mr Aqeel following that request. On 30 May 2024 he texted Mr Aqeel: “Hi Musa, can you pay me as you said so, please. I need this money so much right now.” No payment was received in response.

[21] On 7 June 2024 Mr Campos messaged Mr Aqeel stating: “Hi Musa, I can’t wait any longer. Can you pay me please.”

[22] Having received no payment from Mr Aqeel, on 17 June 2024 Mr Campos lodged a Statement of Problem with the Authority.

Is Mr Campos owed monies by Mr Aqeel?

[23] Mr Campos provided supporting evidence of his claim for unpaid wages, including timesheets and IRD payments records and he gave evidence by way of affirmation which supported the documentary material filed with the Authority.

[24] The Wages Protection Act 1983 governs the payment of wages between an employer and an employee. In accordance with s 4: “an employer shall, when any wages become payable to a worker, pay the entire amount of those wages to that worker without deduction”. I find that Painters Ink had not complied with the Wages Protection Act requirement.

[25] Mr Campos’ unpaid hours totalled 160, made up as follows:

w/c 18 September until 27 September 2023	59 hours
w/c 12 October to 18 October 2023	33 hours
w/c 19 October to 24 October 2023	32 hours
w/c 2 November to 8 November 2023	32 hours
day of 13 November	4 hours

[26] I determine that Mr Campos is entitled to payment of wages for the hours which he worked in the sum of \$4,745.60 gross (calculated as 160 hours x \$29.66 per hour, 1,192.95 net.

Remedies

[27] Mr Aqeel is ordered to pay Mr Campos the sum of \$4,745.60 gross net in respect of unpaid wages.

[28] Payment is to be made within 14 calendar days of the date of this Determination.

Interest

[29] Mr Campos seeks interest on the monies owed to him as unpaid wages.

[30] The Authority has the power to award interest under clause 11 of the Second Schedule of the Act.

[31] The purpose of interest is to reimburse someone for the loss of use of monies to which there is established entitlement as is the case with Mr Campos.

[32] I consider it appropriate therefore to award Mr Campos interest on the amounts owed to him.

[33] Interest is payable in accordance with Schedule 2 of the Interest on Money Claims Act 2016. A calculator to assist in the calculation of interest is available on the Ministry of Justice website.

[34] Mr Aqeel is ordered to pay interest on the sum awarded to Mr Campos as unpaid wages until such time as the payment has been made in full.

Filing Fee

[35] Mr Campos is to be reimbursed the filing fee of \$71.55 by Mr Aqeel.

Orders

[36] I have made the following orders:

- **Mr Aqeel is ordered to pay Mr Campos the sum of \$4,745.60 gross net in respect of unpaid wages.**
- **Mr Aqeel is ordered to pay Mr Campos the filing fee of \$71.55.**

- **The unpaid wages payment and the filing fee are to be paid to Mr Campos within 14 days of the date of this Determination.**
- **Mr Aqeel is ordered to pay interest on the sum awarded to Mr Campos as unpaid wages until such time as the payment has been made in full.**

Costs

[37] There is no order for costs.

Eleanor Robinson
Member of the Employment Relations Authority