

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2024] NZERA 724
3276079

	BETWEEN	LOUAY HARIRI Applicant
	AND	ADEVA HOME SOLUTIONS PTY LTD Respondent
Member of Authority:	Eleanor Robinson	
Representatives:	Applicant in person None for the Respondent	
Investigation Meeting:	4 December 2024 by AVL	
Submissions and/or further evidence	4 December 2024 from the Applicant None from the Respondent	
Determination:	05 December 2024	

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Mr Hariri, claims that he is owed wage arrears by the Respondent, Adeva Home Solutions PTY Ltd (Adeva) trading as Adeva Security. In particular Mr Hariri claims that he was not paid one week's notice pay and accrued holiday pay entitlement when his employment was ended by way of redundancy.

[2] Mr Hariri is also seeking a penalty in relation to the non-payment of wages and holiday pay due to be paid to him at the ending of his employment with Adeva.

The Authority's investigation

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

[4] No Statement in Reply was received from the Respondent.

[5] I am satisfied that service had been effected on the Respondent on the basis as follows:

- Service of the Statement of Problem was effected by the New Zealand postal service at the registered address in New Zealand of Matthew Woolston, Director and person authorised to accept service as set out on the New Zealand Companies Office register on 20 February 2024;
- The Statement of Problem and all subsequent documents associated with the Authority's process were delivered by courier to the Respondent at its notified address for service on 5 April 2024; and
- The Authority Officers also attempted to contact Mr Woolston by telephone at Adeva's Australian address but the calls were not accepted.

[6] Regulation 17(1)(b) of the Regulations to the Employment Relations Act 2000 (the ERA) states that service of a notice, order, or other document required to be served by the Act or these regulations may be effected on a corporation incorporated in New Zealand by leaving the notice, order, or document at the corporation's registered office. I am satisfied that service on the Respondent Adeva was made in accordance with regulation 17(1)(b) when the parcel of documents was served on the registered address of the company for service in New Zealand on two separate occasions.

[7] The Respondent was not present at the start of the investigation. The Investigation Meeting was delayed while the Authority Officer attempted to make contact by telephone and by email with Adeva but this was without success, and Adeva did not attend the Investigation Meeting.

[8] Given the difficulties encountered in progressing this case, I was satisfied that no good cause had been shown for Adeva's failure to attend and I consequently proceeded with the Investigation Meeting pursuant to clause 12 of Schedule 2 of the Act.

[9] 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 received.

Issues

[10] The issues requiring investigation are whether or not:

- Mr Hariri is owed any monies by Adeva?
- Adeva should pay a penalty in respect of a breach of s4 of the Wages Protection Act (WPA) and s 23 of the Holidays Act 2003 (the HA)?

Background

[11] Adeva is a security company based in Australia. It has three directors based in Australia and one in Switzerland. It was registered on the overseas company register as a body corporate incorporated in Australia to carry on business in New Zealand in June 2022. An office and address for service in New Zealand were notified to the Companies Office website.

[12] Mr Hariri said he was recruited because Adeva entered into business with a security company based in New Zealand and it was recruiting New Zealand based employees to carry out the work.

[13] Mr Hariri was interviewed by Adam Woolston, General Manager, and appointed as a Security Installation and Service Technician, commencing work on 1 May 2023. He was provided with an individual employment agreement which set out his salary as \$75,000.00 per annum, and in clause 33.2 that Adeva would provide four weeks' notice to the employee in the event of the termination of his employment.

[14] Mr Hariri said that he worked as part of a team of four who reported to Adam Woolston. Initially his work was based in Auckland, however by the end of September 2023 he became aware that there was less work, and often the team was required to work outside of Auckland, or were told to stay at home and wait for work.

[15] On 22 November 2023 Mr Hariri received a letter signed by Adam Woolston which informed him that Adeva was proposing a restructure of its business and commencing a consultation process. The letter set out the reasons why the restructure was being undertaken.

[16] As a result of the restructuring Mr Hariri's position was disestablished and he was made redundant on 29 November 2023.

[17] Mr Hariri said he received pay for the three working days prior to the redundancy notification on 29 November 2023 and one week of the notice period.

[18] He emailed Adeva asking for an explanation for the withholding of the outstanding payment. Mr Hariri said he had been provided with payment for some tools by Adeva and he had returned these tools and also the car with which he had been provided.

[19] He informed the Coordinator for Adeva that he had returned everything to Adeva and received two further weeks' payment. When he queried why the remaining amount was still outstanding, the Coordinator told him that he had not returned the box in which the drill and impactor were stored.

[20] Mr Hariri said he had thrown the impactor box away, however he was able to obtain a replacement box from a friend and send that to Adeva. He emailed the Coordinator who confirmed that he would be paid the final amount owing, but this would have to await Mr Adam Woolston's return from leave.

[21] Mr Hariri said he received a further payment from Adeva, but it was not the payment he was expecting so he emailed Mr Woolston on 15 January 2024:

Hello Adam,

Thank you for the payment I got in my account today 15th January 2024.

I have just checked the payment and found it is only for 2 days (salary) and 22.80 hrs on rate of 13.35 \$ for annual leave.

Depending on my contract and calculations, I think I should get the following:

1. The last week of the notice month (which was on hold) – 5 days (Salary)
2. The 3 working days before the redundancy month started 27-28-29 November (Salary)

So I have 8 days (salary) not paid. After this payment today, they are 6 days (salary) not paid.

3. The remaining annual leave hours: 91.20 hours after deducting the paid 22 Dec (public Holiday).

I kindly ask you to explain this last payment in details.

[22] Mt Woolston replied:

Hey Louay,

You were paid over \$4.2k for leave/Holiday pay. I am not sure where you are getting the 22.80 hours at 13.35 from ???

[23] Mr Hariri replied:

Hey Adam,

Please find attached the payslip. The 22.80 hrs and their rate is mentioned inside.

In the previous payslip, it's mentioned that I have 91.2 hrs as annual leave. However, I couldn't see them in the attached payslip. I may not be able to understand how you calculated them. That's why I asked for an explanation.

Moreover. The 2 days paid in the payslips are not clear to me as I believe I have the withheld last week of the notice and 27 – 29th November days, not paid.

[24] When he did not receive a response to his last email, Mr Hariri consulted a Community Law Office lawyer who asked him to provide all his payslips. Her conclusion after examining Mr Hariri's payslips for the period 27 November 2023 to 24 December 2023 was:

...our calculation is that Adeva Home Solutions PTY (AHSP) owes you wage arrears amounting to:

1 weeks' notice pay + holiday pay factoring that = \$1,442.31 + \$115.39 = \$1,557.70

[25] Mr Hariri lodged a Statement of Problem on 5 February 2024.

Mr Hariri owed any monies by Adeva?

[26] Employees are to be paid all wages owed to them as and when they fall due pursuant to s 4 of the WPA. They are also to be paid annual holiday pay in accordance with s 23 of the HA when their employment comes to an end.

[27] Mr Hariri has provided evidence supporting his claim to unpaid wages and holiday pay.

[28] I determine that Mr Hariri is owed the sum of \$1,442.31 gross as wage arrears, and the sum of \$115.39 as holiday pay.

Penalties

[29] As stated above, employees are to be paid all wages owed to them as and when they fall due and to be paid any accrued annual leave entitlement at the date of termination.

[30] Adeva has failed to make full payment of all the outstanding payments due to Mr Hariri.

[31] Mr Hariri said that the shortfall in Adeva making all the payments due to him upon termination caused him financial difficulty and resulted in his having to borrow money from friends to pay his family bills. I find that a penalty is appropriate in this case.

[32] I have assessed the level of penalty to be imposed against the factors set out in s 133A of the Act and following the guidance and weighting to be applied provided in a number of Employment Court judgments.¹

[33] The purpose of penalties is punitive. They are not imposed to remedy the applicant's loss, but to punish the person who has breached a duty under the Act and to condemn that behaviour.

[34] The starting point for a penalty in the case of a company is a maximum amount of \$20,000.00.

[35] I accept that Adeva had some justification for withholding some of the payment due to be paid to Mr Hariri initially pending the return of all of the equipment belonging to it. However

¹ For example, *Borsboom (Labour Inspector) v Preet PVT Ltd* [2016] NZEmpC 143; *Nicholson v Ford* [2018] NZEmpC 132; *A Labour Inspector v Daleson Investment Limited* [2019] NZEmpC 12.

once the final item had been returned and acknowledged and final monies owed were promised by Adeva to be paid, that should have occurred.

[36] It did not and despite his communications with Adeva, the amount remained unpaid a year after Mr Hariri's employment with Adeva came to an end.

[37] Examining the financial ability of Adeva to meet any penalty imposed, I note that the part of the Adeva operation based in New Zealand had operational difficulties, being a lack of ongoing contracts, and this resulted in a restructuring operation. However Adeva Home Solutions PTY Limited is part of an Australian operation and there is no information before the Authority that would support a conclusion that it would be unable to meet any financial penalty.

[38] There is no evidence of previous similar actions. I have also considered the proportionality of any penalty award against that awarded in other similar cases as I am required to do.

[39] In all the circumstances I find it just that Adeva pay a penalty of \$4,000.00.

[40] Mr Hariri has been adversely affected by the breaches committed by Adeva, and I consider it just in the circumstances that part of the penalty is paid to him.

[41] I determine that Adeva should pay a penalty of \$4,000.00 of which \$2,000.00 is to be paid to Mr Hariri.

Filing Fee

[42] Adeva is also ordered to pay Mr Hariri \$71.56 in respect of the Authority filing fee.

Orders

[43] I have made the following orders Adeva is ordered to pay the following amounts:

- **The sum of \$1,442.31 gross to Mr Hariri as unpaid wages pursuant to s 4 of the WPA**
- **The sum of \$115.39 gross to Mr Hariri as unpaid holiday pay pursuant to s 23 of the HA**
- **Adeva is ordered to pay a penalty of \$4,000.00 to the Crown within 14 days of the date of this determination. On recovery of the penalties, the Crown should then pay \$2,000.00 of that amount to Mr Hariri.**

- **Adeva is also ordered to pay Mr Hariri \$71.56 in respect of the Authority filing fee.**
- **All payments are to be made within 14 days of the date of this determination.**

Costs

[44] Mr Hariri represented himself and there is no order for costs

Eleanor Robinson
Member of the Employment Relations Authority