

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 216
3291059

BETWEEN SOMNATH SHARMA
Applicant

AND KC SERVICE LIMITED
First Respondent

AND KARANVEER CHOUHAN
Second Respondent

Member of Authority: Lucia Vincent

Representatives: Somnath Sharma, self-represented
No appearance for the Respondents

Investigation Meeting: 3 December 2024 in Christchurch

Submissions and Further 3 December 2024 and 21 January 2025
Information Received:

Determination: 16 April 2025

DETERMINATION OF THE AUTHORITY

What is the Employment Relationship Problem?

[1] Mr Sharma claims KC Service Limited (KCS) owes him wages and holiday pay totalling approximately \$3,900.00.¹

How did the Authority investigate?

[2] The Authority held an investigation meeting on 3 December 2024 in Christchurch. The respondents did not engage, despite being contacted by the Authority Officer on the day. Mr Sharma gave evidence by affirmation with the assistance of a Hindi interpreter.

¹ All amounts are gross unless stated otherwise.

[3] After the investigation meeting, although the respondents had been served with the statement of problem, it appeared unclear whether the respondents had received a copy of the notice of investigation meeting. To deal with this the Authority provided the respondents with a further opportunity to respond to the claims and invited them to provide any information they wished for the Authority to consider as part of its investigation. The respondents have not engaged with the Authority since despite being served with all relevant documents to enable them to do so.

[4] The Authority proceeded with its investigation in the absence of input from the respondents who have not provided evidence of any reason for their lack of engagement.²

[5] As permitted by s 174E of the Employment Relations Act 2000 (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.

What were the issues?

[6] The issues for the investigation meeting were:

- (a) Who employed Mr Sharma?
- (b) Does KCS owe Mr Sharma any money?
- (c) What, if any, order should the Authority make for payment of any money owed to Mr Sharma by KCS?
- (d) Should the Authority award costs or expenses?

Who employed Mr Sharma?

[7] KCS provided Mr Sharma with an individual employment agreement that was signed and dated by both parties on 17 July 2022. Mr Chouhan signed this as a director of a different company, KC Services Limited. However, that company has a different director and is no longer registered (and has not been registered since 14 December 2012 according to the Companies Office register).

² As set out in clause 12 of Schedule 2 of the Employment Relations Act 2000.

[8] Under the clause relating to the parties, the agreement states that the parties to the employment agreement are KC Services Limited (the employer) and Somnath Sharma (the employee). Again, the reference to a different company that is now removed appears to be a typo.

[9] The reference to this other company appears to be a typo due to the addition of an “s” to read services rather than service. Mr Chouhan is a director of KCS, a company that remains registered and is obliged to ensure it clearly and correctly states its name.³

[10] Despite the incorrect name, Mr Sharma appeared to accept that KCS employed him (rather than Mr Chouhan personally). That Mr Chouhan is the director of KCS and not the other company supports that. So too does the fact that the payslips provided are all in the name of KCS and not the incorrectly named company in the employment agreement.

[11] I find KCS employed Mr Sharma.

Does KCS owe Mr Sharma any money?

[12] The agreement recorded that Mr Sharma would work 41 hours each week between Tuesday and Sunday. KCS would pay Mr Sharma a gross annual salary of \$54,366.00 (equating to an hourly rate of \$25.50 for a 41 hour week, \$1,045.50 weekly, or \$522.75 half weekly).

[13] Mr Sharma provided a number of payslips that showed the following payments for hours worked:

Pay period	Amount	Hours
5 to 11 June 2023	\$1,045.50	41
19 to 25 June 2023	\$1,045.50	41
24 to 30 July 2023	\$1,045.50	41
28 August to 3 September 2023	\$1,045.50	41
2 to 8 October 2023	\$1,045.50	41

³ Section 25 of the Companies Act 1993.

16 to 22 October 2023	\$1,045.50	41
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[14] The final payslip provided shows holiday pay outstanding of \$3,923.58 as well as three alternative holidays.

[15] Mr Sharma provided a message from Mr Chouhan to him on 8 April 2024, four months after his employment ended on 9 December 2023. Mr Sharma referred to payments made to him as follows:

Staff salary pending:
Somnath total: \$7,384.00
PAID:
9/1/24 – 522.5
5/2/24 – 522.5
19/2/24 – 522.5
25/3/24 – 522.5
Balance: 5566.50

[16] From the above message, it appears half weekly amounts were paid in instalments but had then stopped. However, Mr Sharma told the Authority that since that message he received \$1,600.00 from KCS and nothing further since April 2024. That leaves the total outstanding amount of \$3,966.50 he says he is owed by KCS.⁴

[17] Mr Sharma suggested the amount was not a gross figure, however it seems more likely to be a gross figure given the amounts about of \$522.50 appear to be approximately half of the gross amount he would receive for a 41 hour week, as set out in his payslips. He accepted his payslips were accurate for the pay period they related to, although he did not receive all.

[18] Ideally the Authority would have all records relating to hours worked and payments made by KCS. Regrettably, given the lack of engagement from the respondents, there is a gap in the records that means Mr Sharma has needed to rely on his memory and a message about what remains outstanding. I accept Mr Sharma has been inhibited by this lack of records. In the

⁴ \$5,566.50 - \$1,600 = \$3,966.50.

absence of records proving otherwise from KCS, and taking a pragmatic approach, I accept Mr Sharma's claims around hours worked and payments received.⁵

[19] I find that KCS owes Mr Sharma \$3,966.50. Failing to pay that amount means KCS has failed to pay Mr Sharma his holiday pay and wages without deduction.

Should the Authority order payment?

[20] Having found KCS owes Mr Sharma \$3,966.50, it is appropriate for the Authority to order that KCS pays that amount to Mr Sharma. I order KCS pay Mr Sharma \$3,966.50 in outstanding wages and holiday pay.

[21] Mr Sharma has been without wages owed to him for a considerable amount of time. It is also appropriate to award interest on the outstanding amount to be calculated for the period from when his employment ended (9 December 2023) to the date of determination.⁶ Interest totals \$321.18.⁷

[22] Mr Sharma gave evidence that the only person he dealt with was the sole director and shareholder of KCS, Mr Chouhan. Mr Chouhan signed the employment agreement. Mr Sharma reported to and dealt with Mr Chouhan for all purposes related to his employment including communications about payment and payslips.

[23] KCS is a company registered with the Companies Office as of the date of this determination. It is unclear whether it has the means to pay, although its failure to pay suggests it may not.

[24] I reserve the issue of whether Mr Chouhan is a person involved for the purposes of s 142W of the Act. Mr Sharma may return to the Authority to obtain leave under s 142Y if KCS defaults in payment of the amounts subject of the orders made in this determination.

⁵ As permitted by s 132 of the Act - if an employer fails to produce the wages and time record and it has prejudiced an employee's ability to bring an accurate claim under s 131 then the Authority can accept evidence from that employee as proven unless an employer can prove the claims are incorrect.

⁶ Act, clause 11, second schedule, calculated in accordance with Schedule 2 of the Interest on Money Claims Act 2016.

⁷ Based on a total debt of \$3,966.50 using the civil debt interest calculator found at [Civil debt interest calculator | New Zealand Ministry of Justice](#).

Should the Authority award costs?

[25] Mr Sharma represented himself. Costs would not normally be awarded.

[26] Mr Sharma has had to file in the Authority to obtain an order for payment including paying the filing fee. I order KCS reimburse Mr Sharma for his filing fee of \$71.55.

Summary of Orders

[27] I order KCS pay Mr Sharma:

- (a) Wage arrears and holiday pay of \$3,966.50;
- (b) Interest of \$321.18; and
- (c) Expenses of \$71.55.

Lucia Vincent
Member of the Employment Relations Authority