

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2025] NZERA 46
3235899

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| BETWEEN | ELAN JONES Applicant |
| AND | ERBCO (2015) LIMITED First Respondent |
| AND | DWAYNE ERB Second Respondent |
| AND | SHELLEY COLLINSON Third Respondent |

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|------------------------|---|
| Member of Authority: | Lucia Vincent |
| Representatives: | Jenny Beck and James Sawers, counsel for the Applicant No appearance for the Respondents |
| Investigation Meeting: | 22 February and 4 November 2024 by AVL |
| Submissions Received: | 4 November 2024 from the Applicant |
| Determination: | 29 January 2025 |

DETERMINATION OF THE AUTHORITY

What is the Employment Relationship Problem?

[1] Mr Jones has asked the Authority to order ErbcO (2015) Limited (ErbcO) to pay him wages arrears for work he performed on its dairy farm during August, September and October 2022. He has also asked for an order requiring ErbcO to pay his annual holiday pay plus interest, compensation and costs.

[2] ErbcO did not participate in the Authority's investigation.

[3] The Authority is tasked with resolving the employment relationship problem.

How did the Authority investigate?

[4] Mr Jones lodged a statement of problem on 19 June 2023. None of the respondents lodged a statement in reply. Nor did they comply with directions to provide evidence and attend the investigation meetings.

[5] Following a case management conference on 12 December 2023, the Authority directed the parties to mediation and scheduled an investigation meeting for 22 February 2024 if the matter did not settle (it did not).

[6] Ms Beck represented Mr Jones from 20 February 2024 and attended the first investigation meeting during which the Authority directed Mr Jones to provide further information supporting his claims. He provided this information on 14 August 2024. Mr Jones also lodged an amended statement of problem on 11 October 2024.

[7] Relevant documents including the statement of problem and notice of investigation meeting were sent to the respondents. These documents were emailed then couriered to the address for service for Erbco and the addresses listed on the companies register for Mr Erb and Ms Collinson as directors. I am satisfied the respondents were served with relevant documents.

[8] The Authority held a further investigation meeting on 4 November 2024 by AVL. Neither Mr Erb nor Ms Collinson responded to the calls made to them before the investigation meeting started. The meeting proceeded in their absence and without anyone representing Erbco because no good cause was shown for their failure to attend or be represented at the investigation meeting.¹ Mr Jones provided evidence by oath or affirmation, answering questions from the Member and his representative.

[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 and submissions received.

¹ Employment Relations Act 2000 (Act), clause 12, Schedule 2.

What were the issues?

[10] The Authority investigated the following issues:

- (a) Who did Mr Jones work for?
- (b) What did the parties agree?
- (c) When did Mr Jones work?
- (d) What is Mr Jones owed?
- (e) What orders (if any), should the Authority make?
- (f) Are Mr Erb and Ms Collinson persons involved for the purposes of s 142W of the Act and should leave be granted under s 142Y of the Act?

Who did Mr Jones work for?

[11] Mr Jones says he worked for Erbco. Both Mr Erb and Ms Collinson are directors. Due to Mr Erb being involved in a car accident, Mr Jones says he dealt with Ms Collinson who carried out responsibilities as farm manager.

[12] Based on an email from Mr Erb and Ms Collinson's communications with a Labour Inspector after Mr Jones left, it appears accepted on behalf of Erbco that Mr Jones worked on their farm between 19 August and 18 October 2022. In addition, Erbco made one payment of \$1,000 to Mr Jones on 14 October 2022. Mr Jones provided a bank statement showing the payment was from Erbco.

[13] I find Erbco employed Mr Jones.

What did the parties agree?

[14] Very little was expressly agreed. There was no employment agreement.

[15] During June 2022 Mr Jones says he worked in return for accommodation and food as part of a WOOFing exchange. He has not claimed payment for that period.

[16] The Authority received an email from Mr Erb on 21 September 2023 setting out his views that he did not owe Mr Jones any money and referring to the WOOFing exchange predating the period for which Mr Jones has claimed payment. Because Mr Erb

did not attend the investigation meeting to answer questions about his statement, it was of limited assistance. However, Mr Erb appeared to accept he asked Mr Jones to return and work on the farm in the Spring, and that the terms were to be discussed when he arrived. Regrettably, Mr Erb's involvement in a car accident prevented him from being on the farm when Mr Jones started work. Despite that, Mr Erb appears to acknowledge Mr Jones performed work in his absence.

[17] Mr Jones says Mr Erb asked him to come back and work in the Spring full time. Due to Mr Erb's absence, Mr Jones worked primarily with Mr Erb's son. Mr Jones says he did whatever was needed. He milked cows, undertook general and essential farm work including work created by a lack of maintenance, flood damage, Mr Erb's absence and calving. For example, Mr Jones says the milking took longer (instead of two hours it took between four and six hours most days).

[18] The parties did not discuss a pay rate nor other employment arrangements. Despite that, Erbco recognised an obligation to pay Mr Jones for his work, even if the amount payable and hours worked were disputed.

When did Mr Jones work?

[19] Mr Jones estimated he worked 576 hours across 58 days from 19 August 2022 until October 2022. He accepts he had three days off (which he believes he should be paid for). He says he worked a shorter day of six hours on his final day and otherwise worked between eight and 12 hours during that period.

[20] No records were kept, although after Mr Jones liaised with a Labour Inspector, Ms Collinson provided a record that appeared to be handwritten and based off the days Mr Jones had told her he had worked. Ms Collinson's note recorded that Mr Jones had worked 57 out of 60 available days during the period 19 August to 18 October 2022. However her estimate was that Mr Jones had worked for only four hours a day (based on milkings only taking two hours to complete and Mr Jones doing no other work). Ms Collinson also noted a training wage of \$16.96 per hour, plus holiday pay at 8%, less living costs (of \$195 per week). The total she accepted Erbco owed Mr Jones was significantly less than what Mr Jones believed he was entitled to.

[21] There was a series of text messages between Ms Collinson and Mr Jones about outstanding payment after the employment relationship had ended. This included a message from Ms Collinson saying the employee had a responsibility to write down their hours.

[22] An employer has a responsibility to keep time and wage records.² Erbcoco did not do so. Retrospectively created records are inadequate. In the absence of reliable records from Erbcoco proving otherwise, I accept Mr Jones' claims around hours worked.³

[23] I find Mr Jones worked 576 hours claimed.

What is Mr Jones owed?

[24] Mr Jones claims payment for his work at the rate of the minimum wage. At the time of his employment with Erbcoco, the Minimum Wage Order 2022 prescribed the minimum rate of wages payable to an adult worker as \$21.20 per hour.⁴

[25] Based on the note provided to the Labour Inspector, Ms Collinson appears to claim Erbcoco could pay Mr Jones the training rate applicable.⁵ For the training rate to apply, Erbcoco must show it required Mr Jones as part of his employment agreement to undertake at least 60 credits a year in an industry training programme with the purpose of becoming qualified for the occupation he was working in. It cannot.

[26] Ms Collinson in her note also claimed deductions of \$195 per week for "living costs" consisting of internet, power, food and rent. Mr Jones did not provide written consent for any deductions to be made.⁶ It was unclear if this was claimed by Ms Collinson as a private arrangement or board and lodgings provided as part of the employment relationship.⁷ In the circumstances I do not consider it appropriate to make any deductions for living costs.

² Act, s 130.

³ 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.

⁴ Minimum Wage Act 1983 (MWA), s 6; Minimum Wage Order 2022, clause 4.

⁵ At the time, clause 6 of the Order set this at \$16.96 (80% of the adult minimum wage).

⁶ As required under s 6 of the Wages Protection Act 1983.

⁷ That may have been deductible at the rate of 15% or 5% under s 7 of the MWA.

[27] Mr Jones asks for the payment of \$1,000 he received to be deducted from what he is owed by Erbco. That is appropriate.

[28] I find Erbco owes Mr Jones wages for 576 hours at the hourly rate of \$21.20, totalling \$12,211.20.⁸ Erbco did not provide payslips or a breakdown of how it calculated the payment made of \$1,000. Taking a pragmatic approach, I deduct \$1,000 from the amount owing, leaving \$11,211.20 in wage arrears owing.

[29] I decline to order payment to Mr Jones for hours he did not work - the three days he agreed he had as days off directed by Ms Collinson. There was a degree of autonomy and uncertainty about when Mr Jones worked. It is reasonable to allow for three days off.

[30] Erbco also owes Mr Jones annual holiday pay at the rate of 8% on the wage arrears of \$12,211.20, totalling \$976.90.⁹

[31] Mr Jones also claims compensation of \$10,000 due to the impact of failing to pay him for his work despite promises to do so. I understood the claim to primarily relate to his wage arrears claim rather than a separately raised personal grievance. I decline to award compensation.

[32] Mr Jones has claimed interest. Although no timeframe for payment was discussed when Mr Jones worked for Erbco, it is reasonable to expect payment in full within a reasonable period after his final day of employment i.e. within a week of 18 October 2022, on or before 25 October 2022. I award interest on the outstanding wages and holiday pay to be calculated for the period from 25 October 2022 to the date of determination.¹⁰ Interest totals \$1,527.51 for the amount of wages and holiday pay owing as of the date of determination.¹¹

⁸ All amounts are gross except for the \$1,000 payment Erbco made.

⁹ Holidays Act 2003, s 23.

¹⁰ Act, clause 11, second schedule, calculated in accordance with Schedule 2 of the Interest on Money Claims Act 2016.

¹¹ Based on a total debt of \$12,188.10 using the civil debt interest calculator found at [Civil debt interest calculator | New Zealand Ministry of Justice](#).

What (if any) orders should the Authority make?

[33] Erbco must pay Mr Jones:

- (a) Wages arrears of \$11,211.20;
- (b) Annual holiday pay of \$976.90; and
- (c) Interest of \$1,527.51.

Are Mr Erb and Ms Collinson persons involved?

[34] Mr Erb and Ms Collinson are directors of Erbco. Both were involved in the employment of Mr Erb and were aware he worked on the farm run by Erbco. They were party to communications with Mr Erb seeking payment for his work. Both appeared to tell Mr Jones they could not financially afford to pay him. At the time of determination, Erbco remains registered as a company.

[35] I find Mr Erb and Ms Collinson were directly or indirectly knowingly concerned in Erbco's breaches of employment standards i.e. failures to pay Mr Jones at least the minimum wage and holiday pay for his work.

[36] I am satisfied Mr Erb and Ms Collinson are persons involved for the purposes of s 142W of the Act. I grant Mr Jones leave to return to the Authority to seek an order for payment to the extent Erbco defaults in payment of the amounts subject of the orders made in this determination.

Costs

[37] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. In this regard, the Authority records that there were two investigation meetings of approximately one hour each.

[38] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Jones may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum the respondents will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[39] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.¹²

Lucia Vincent
Member of the Employment Relations Authority

¹² For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1