

**IN THE MATTER OF A DISPUTE BEFORE THE EMPLOYMENT AND LABOUR  
RELATIONS TRIBUNAL PURSUANT TO PART VA SECTION 44B EMPLOYMENT ACT  
2000**

**BETWEEN**

**CLAIMANT**

**AND**

**(REPRESENTED BY**

**RESPONDENT**

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**DECISION AND ORDER**

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**Date of Hearing: 8<sup>th</sup> April 2024**

**Issues: To determine whether Mr. [redacted] is entitled to a rate of pay as initially agreed pre-employment, vacation pay, pay for public holidays, and cost for relocation.**

**Tribunal Members:**

John Payne, Chairman

Jocene Wade, Deputy Chair

Orin Simmons, Tribunal Member

The Claimant participated via Webcam. However, there were some technical issues, and the Hearing was completed by WhatsApp.

### **The Facts**

The parties in their oral and written presentations agreed to the following:

1. The Claimant worked for a local company from March 2017 to July 2022. During that period, he had permission from the Minister responsible for Immigration to do so.
2. At some point during that period the Claimant was introduced to the Respondent through their wives being nationals of
3. During the last two years of employment the Claimant was unhappy with his employment arrangements and sought other employment.
4. The Claimant, following a conversation with the Respondent, started to "hustle" with the Respondent without the knowledge of his employer or permission from the Minister of Immigration contrary to the conditions of his work permit.
5. A job offer was made with the rate of \$27.00 per hour being agreed.
6. There was some disagreement regarding the discussion related to medical insurance.
7. An application was made to the Department of Immigration for a work permit for the Claimant as a finished
8. The Claimant started his employment with his new company on 2 August 2022.
9. After several months the Respondent stated that he was unable to pay the \$27.00 as agreed and offered \$25.00.
10. It does not appear that the Respondent spoke to the Claimant regarding his inability to perform at the level expected. Hence the real reason for the reduction in the rate of pay.
11. It is agreed that a Contract of Employment was not signed.
12. The Claimant was reminded in March 2023 that his contract was due to expire in June of that year and that the renewal of the work permit process needed to be started.

### **Discussion**

13. The Tribunal took note of the evidence of the Respondent and his expression of ignorance regarding the legislation and his legal obligations.
14. It also noted that the failure to provide a Statement of Employment under Section 6 could result in a civil penalty being imposed under Section 44M.

### **Public Holidays**

15. Following discussion with the Tribunal and noting the relevant section of the legislation the Respondent accepted that he was in error and owed the Claimant for Public Holidays
16. It was calculated that the number of public holidays during the period of employment was 9 days.

#### **Vacation Entitlement**

17. There is some disagreement among the Parties regarding the application of Section 12 (1) (a). The issue was when should entitlement start at the date of the validity of the work permit or the date of actual starting employment?
18. The contention in this matter would determine how many days' vacation entitlement there would have been.
19. The Tribunal is of the view that entitlement starts on the first day of work and not the start date of the work permit.
20. There was no disagreement that \$1000 was paid toward vacation.

#### **Rate of Pay**

21. Having listened to both Parties there was no disagreement that the rate of \$27.00 was originally agreed.
22. Further, no objection or evidence was provided that the Claimant was not performing at the desired level.
23. The Claimant did agree to a revised rate of \$25.00 whether reluctantly or not.
24. The Tribunal believed that the violation of the Immigration Act by both Parties should result in some penalty for the Claimant. The admission of "hustling" with his previous employer deserves some penalty.

#### **Determination**

Having heard the representations and evidence of the Parties, the Tribunal has determined that:

- The Respondent is in violation of the Employment Act 2000, Section 6, failing to provide a statement of employment; including:
  - subsection (e) *the gross wage or other method of calculating it,*
  - subsection (p) *where the employment is pursuant to a work permit,*
- However, the Tribunal, having considered the circumstances, does not consider it appropriate to impose a civil penalty under Section 44M of the Employment Act 2000.

- The Respondent is in violation of the Employment Act 2000, Section 11(2) public holidays; failing to pay for public holidays during the period of employment
- The employment period is determined as 2 August 2022 to 8 June 2023 or 9 months.
- The Respondent is not in violation of the Employment Act 2000, Section 12(1A), and vacation leave. Therefore, no compensation for vacation is owed; Claimant having worked for less than one year is not entitled to two weeks' vacation pay. It was noted that \$1000.00 was previously paid.
- The rate of pay is determined to be \$25.00 per hour.

## Order

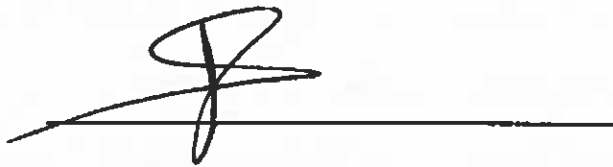
The Tribunal makes the following Order: the Respondent to compensate the Claimant for:

- the cost of repatriation in the sum of \$885.00;
- The cost of 9 days' wages for public holidays in the sum of \$1800.00;
- . The sum of \$2,685 should be paid by the Respondent to the Claimant by 10<sup>th</sup> May 2024.

The Determination and Order of this Tribunal are binding. However, if either Party is aggrieved by the Determination and Order, it may be appealed to the Supreme Court on a point of law within 21 days of its receipt.

On this day, April 22 2024

John Payne, Chairman



Jocene Wade, Deputy Chairman



Orin Simmons, Tribunal Member

