

**BETWEEN**

**ADE Ltd**

**APPLICANT**

**AND**

**ZWV**

**RESPONDENT**

Date of Order:

3 October 2012

Referee:

Referee I Davidson

---

**ORDER OF THE DISPUTES TRIBUNAL**

---

**The Tribunal hereby orders that the Respondent, ZWV, pay the Applicant, ADE Ltd, \$380.98 within seven days of the date of this decision.**

### **Facts**

[1] The Applicant claims \$380.98 plus filing fees from the Respondent. It was common ground the Applicant overpaid the Respondent \$380.98 in the Respondent's final pay after he had terminated his employment. The Respondent believed he was entitled to retain the money, relying on the Wages Protection Act 1983 and recent employment case law.

### **Issues**

[2] The issues to be decided are whether the Tribunal has jurisdiction, and whether the Applicant is entitled to recover the amount claimed.

### **Law**

[3] The applicable law is s 161 of the Employment Relations Act 2000 (ERA) and the law of quasi-contract.

### **Decision**

[4] Section 161 of the ERA does not reserve exclusive jurisdiction to the Employment Relations Authority to determine matters in circumstances where an employer has overpaid an employee after the termination of employment.

[5] The employment contract had ended at the time the overpayment was made. The Applicant's claim is not founded on contract and there has been no breach of contract by the Respondent.

[6] The Tribunal has jurisdiction under s 10(1)(a) of the Disputes Tribunals Act 1988 to determine the matter under quasi-contract.

[7] Under quasi-contract, an obligation arises where one person has been unduly enriched at the expense of another and is required *quasi ex contractu* (as if from a contract) to make restitution. Quasi contractual (restitutionary) liability has been defined as liability, not exclusively referable to any other head of the law, imposed upon a particular person to pay money to another particular person on the grounds of unjust benefit.

[8] The Respondent has, through the Applicant's mistake, received money he was not entitled to receive.

[9] The Respondent should repay this money unless there is a legal reason justifying the non-repayment.

[10] The Wages Protection Act 1983 does not apply to this situation. Section 4 of that Act states that an employer cannot make any deduction from any wages payable to an employee except in accord with the Act.

[11] In this case, the Applicant is not seeking to recover an overpayment by making a deduction from future wages payable to the Respondent but simply to recover an overpayment of money.

[12] The Respondent has relied on the payment as correct and has spent the money. This is understandable. However, he is not entitled to retain the money simply because his employer made an error.

[13] The employment case law does not support the Respondent's argument that employees are entitled to hold on to overpayments where the employer has made a mistake, as in the circumstances of this case. Indeed, the Wage Protection Act clearly states that employers can recover over-payments but prescribes how they must seek to recover the overpayment if seeking to make deductions from wages payable.

[14] The Respondent argues he has altered his position because of the Applicant's mistake and has spent the money. However, the Respondent has had some time to restore his finances if called upon to make a repayment.

[15] The Respondent has not earned the money and as it stands he has been unduly enriched at the expense of the Applicant. It would be unjust for the Respondent to have the benefit the money at the Applicant's expense.

[16] The Respondent is therefore liable to repay the \$380.98 overpaid by the Applicant.

[17] No order is made for the filing fee, as s 43 of the Disputes Tribunals Act 1988 applies.