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FIRST COVID-19 EMPLOYMENT DECISION HAS BEEN APPEALED

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You will recall our recent article about the first Covid-19 decisions from the Employment Relations Authority (“ERA”).

Since this article, the decision of *Sandu v Gate Gourmet New Zealand Ltd* has been appealed by Gate Gourmet New Zealand Limited.

Gate Gourmet provided an essential service during the Covid-19 Lockdown by providing inflight catering. As the company had very little work over the lockdown period, they were operating with skeleton staff and as such, told its employees that they would be paid 80 percent of their normal wages.

Gate Gourmet’s employees were on the minimum wage. The minimum wage was increased from \$17.70 per hour to \$18.90 per hour on 1 April 2020, during the lockdown.

Gate Gourmet believed that only the employees who were working during the lockdown period were entitled to the new minimum wage of \$18.90, and as such continued to pay its employees 80% of the old minimum wage.

The issues in the decision were:

- a. Whether an employer has an obligation to pay wages to non-working employees if they are providing an essential service; and
- b. Whether reducing non-working employee’s wages to 80 percent when they are on the minimum wage breaches the Minimum Wage Act 1983 (“the Act”).

The ERA found that where employees are ready, willing and able to work, employees are entitled to be paid at least the minimum wage when providing an essential service. As such, Gate Gourmet breached the Act.

Gate Gourmet’s Appeal will be heard in the Employment Court in Auckland on 13 October 2020.

Due to the importance of the issues presented in the case, Business New Zealand and the Council of Trade Unions applied for leave to intervene which has been granted, and they will be making submissions on the issues.

This is going to be a very important decision, so stay tuned for our article on the Employment Court’s final decision on the matter when it is available.

If you are needing employment advice during these unprecedented times, get in contact with our employment team for advice.