

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2013] NZERA Christchurch 124
5376360

BETWEEN LESLIE ASPLET
 Applicant

A N D BIRCHFIELD MINERALS
 LIMITED
 Respondent

Member of Authority: David Appleton

Representatives: Mr Asplet in person
 David Carruthers, Counsel for Respondent

Investigation Meeting: On the papers

Submissions Received: 9 June 2013 from Applicant
 None received from Respondent

Date of Determination: 26 June 2013

DETERMINATION OF THE AUTHORITY (NO 4)

- A. The Applicant is owed the sum of \$3,447.36 in respect of unpaid holiday pay.**
- B. Costs are reserved**

Employment relationship problem

[1] By way of a determination of the Authority dated 24 January 2013, [2013] NZERA Christchurch 19, the Authority ordered, inter alia, that the respondent pay to Mr Asplet unpaid holiday pay calculated at 8% of his gross earnings from the commencement of his employment until its termination. Leave was reserved for the parties to apply to the Authority if they were unable to agree the sum owed.

[2] Mr Asplet has applied to the Authority in accordance with the above direction, stating that he and the respondent have been unable to agree the sum owed in respect of holiday pay because the respondent has not acknowledged any of his communications.

[3] Mr Asplet produced to the Authority a letter dated 19 March 2013, which he had written to the respondent, and which set out what he believed he was owed by the respondent in respect of holiday pay. This amounts to a total of the gross sum of \$3,447.36.

[4] Mr Asplet's entitlement to holiday pay derives from s.23 of the Holidays Act 2003, which states:

23 Calculation of annual holiday pay if employment ends within 12 months

(1) Subsection (2) applies if—

(a) the employment of an employee comes to an end; and

(b) the employee is not entitled to annual holidays because he or she has worked for less than 12 months for the purposes of section 16.

(2) An employer must pay the employee 8% of the employee's gross earnings since the commencement of employment, less any amount—

(a) paid to the employee for annual holidays taken in advance; or

(b) paid in accordance with section 28.

[5] Mr Asplet's letter sets out the exact amounts of remuneration that he received during the five months of his employment with the respondent and calculates 8% of the total. He also calculates 8% of the total gross amount of unpaid wages that I ordered the respondent to pay to Mr Asplet in the determination dated 24 January 2013. These calculations total holiday pay of \$3,447.36.

[6] The respondent has not made any submissions or representations on this matter. Mr Carruthers has advised the Authority that he is still instructed but is unable to obtain instructions. It would not be just to make Mr Asplet wait any longer for a determination on this matter.

[7] There is no evidence that Mr Asplet was paid any amount for annual holidays in advance nor paid any amounts in accordance with s.28 of the Act. Accordingly, I accept the calculations made by Mr Asplet.

Order

[8] I order the respondent to pay to Mr Asplet the gross sum of \$3,447.36 in respect of unpaid holiday pay.

Costs

[9] Costs are reserved, including in respect of the three preceding investigations. If the parties cannot agree how their respective costs are to be dealt with within 28 days of the date of this determination, each is to serve and lodge a memorandum setting out how they want their respective costs to be dealt with, and each party will have a further 14 days within which to serve and lodge any reply.

David Appleton
Member of the Employment Relations Authority