

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2014] NZERA Auckland 244  
5457330

BETWEEN                      MARIA FLORENCIA AYALA  
   Applicant  
  
A N D                              AMPHIBIANS SWIMMING  
   ACADEMY LIMITED  
   Respondent

Member of Authority:      Rachel Larmer  
  
Representatives:              Applicant in person  
   No appearance for Respondent  
  
Investigation Meeting:      18 June 2014 at Auckland  
  
Date of Determination:      18 June 2014

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**DETERMINATION OF THE AUTHORITY**

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- A.      Within 28 days of the date of this determination Amphibians Swimming Academy Limited is ordered to pay Ms Ayala:**
- a.   \$5,274 wage arrears;**
  - b.   \$421.92 holiday pay;**
  - c.   \$71.56 filing fee.**

**No mediation**

[1]      Ms Ayala applied to Mediation Services for mediation but Amphibians Swimming Academy Limited (Amphibians) did not respond to requests to attend mediation. No mediation has occurred.

### **No Statement in Reply**

[2] Amphibians was served with Ms Ayala's Statement of Problem on 28 April 2014. It has not filed a Statement of Reply. It did not seek leave to file a Statement in Reply out of time.

### **No appearance**

[3] Amphibians was served with the Authority's Notice of Hearing but it did not appear at the investigation meeting today.

### **Failure to comply with directions**

[4] Amphibians failed to comply with the Authority's direction to provide Ms Ayala's wage and time and holiday and leave records. It emailed the Authority on 09 June 2013 saying it has instructed lawyers and all relevant information would be provided by 13 June. That did not occur. No information has been provided by Amphibians.

### **Employment relationship problem**

[5] Ms Ayala was employed by Amphibians from 06 May to 13 July 2013. She was not given a written employment agreement contrary to the requirements of s.65 of the Employment Relations Act 2000 (the Act).

[6] Although it was agreed that she would start work on 06 May she was not given any work to do until 04 June 2013. Although Ms Ayala was ready willing and available to work (and wished to work as she had left her previous job) Amphibians simply failed to give her any work to do. There was no agreement between the parties to start Ms Ayala's employment later than had been agreed. Nor did Ms Ayala agree to forgo her wages for that period.

[7] Ms Ayala was not paid from 06 May to 04 June 2013. She is entitled to be paid \$19.50 per hour for the 35.5 hours per week she was contracted to work for four week period from 06 May to 04 June. Amphibians is ordered to pay Ms Ayala \$2,769 wage arrears for this period.

[8] Ms Ayala worked for 160 hours over the period 04 June to 13 July 2013. She should have been paid \$3,210 (160 hours x \$19.50 per hour) but only received \$615,

so there is a shortfall of \$2,505. Amphibians is ordered to pay Ms Ayala \$2,505 wage arrears for hours worked but not paid.

[9] Ms Ayala was not paid any holiday pay upon termination. Amphibians is ordered to pay Ms Ayala \$421.92 ( $\$5,274 \times 8\%$ ) unpaid holiday pay.

[10] Ms Ayala as the successful party is entitled to be reimbursed for her filing fee. Amphibians is ordered to pay her \$71.56 for that.

[11] Amphibians is ordered to pay Ms Ayala the \$5,767.48 she has been awarded within 28 days of the date of this determination.

**Rachel Larmer**  
**Member of the Employment Relations Authority**