

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 189
5351254

BETWEEN NICHOLAS TEN HOORN
 BOER
 Applicant

AND REID RESEARCH SERVICES
 LIMITED
 Respondent

Member of Authority: Rachel Larmer

Representatives: Emaleigh Walker, Counsel for Applicant
 Richard Harrison, Counsel for Respondent

Investigation Meeting: 15 February 2012 at Auckland

Submissions Received 10 May 2012 from Applicant
 25 May 2012 from Respondent
 31 May 2012 from Applicant

Determination: 05 June 2012

DETERMINATION OF THE AUTHORITY

- A. Reid Research Services Limited (Reid Research) is ordered to pay Nicholas Ten Hoorn Boer \$17,291.36 lost remuneration.**
- B. Reid Research is ordered to pay Mr Ten Hoorn Boer interest on \$17,291.36 calculated at the rate of 5% from 25 September 2011 until that amount has been paid in full.**

Employment relationship problem

[1] The Authority in its determination of 26 April 2012¹ awarded Mr Ten Hoorn Boer lost remuneration under s.128(3) of the Employment Relations Act 2000 (the

¹ [2012] NZERA Auckland 142

Act) for the period 28 April to 24 September 2011. This is a period of 21 weeks and one day.

[2] The parties were given 14 days from the date of the substantive determination within which to agree the amount of lost remuneration payable. If that did not occur then a timetable was set for Mr Ten Hoorn Boer to apply to the Authority to fix the amount of lost remuneration.

[3] Mr Ten Hoorn Boer was not awarded interest in the substantive determination because the amount of lost remuneration had not at that point been fixed. The Authority held in its substantive determination that it would reconsider Mr Ten Hoorn Boer's claim for interest if it was required to fix his lost remuneration.

[4] Mr Ten Hoorn Boer now seeks lost remuneration of \$17,291.6 together with interest on that amount.

Reid Research's submissions

[5] Reid Research submits Mr Ten Hoorn Boer's lost remuneration should be \$13,764.25 based on average weekly earnings for the 52 weeks prior to his dismissal of \$651.10 x 21.14 weeks.

[6] Reid Research's calculation is based on 45 weeks and does not reflect that Mr Ten Hoorn Boer had periods of unpaid leave during the 52 weeks prior to his dismissal. I do not accept his average weekly earnings was \$651.10.

[7] The average time Mr Ten Hoorn Boer worked during his employment was 37.5 hours per week² and his hourly wage at the time of his dismissal was \$31.75. I find Mr Ten Hoorn Boer's average weekly wage is \$815.63 (37.5 x \$21.75) and his daily wage is \$163.13 (\$815.63 / 5).

[8] Mr Ten Hoorn Boer is entitled to lost remuneration for 21 weeks and one day for the period 28 April and 24 September 2011. I therefore fix his lost remuneration at \$17,291.36 under s.128(3) of the Act.

² Based on timesheet records.

Interest

[9] Mr Ten Hoor Boer has been deprived of remuneration since his unjustified dismissal on 28 April 2011. He was awarded lost remuneration up to and including 24 September 2011. I therefore consider it appropriate to award him interest on \$17,291.36 to be calculated at the rate of 5% per annum from 25 September 2011 that amount has been paid in full.

Costs

[10] Mr Ten Hoorn Boer is entitled to costs on this application.

[11] Costs will be fixed in conjunction with the Authority's assessment of costs in respect of the substantive proceedings.

Rachel Larmer
Member of the Employment Relations Authority