

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Sarah Anne Bremner (Applicant)
AND Chris and Christina Pederson (Respondent)
REPRESENTATIVES Sarah Anne Bremner In person
Christina Pederson on behalf of the respondents
MEMBER OF AUTHORITY James Crichton
INVESTIGATION MEETING 23 August 2005
DATE OF DETERMINATION 27 September 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant, Ms Bremner, lodged her statement of problem on 2 June 2005, claiming unpaid wages in the sum of \$2,416.00 from the respondents (Mr and Mrs Pederson) for whom Ms Bremner had worked as a nanny.

[2] Despite a number of attempts by the Authority support staff to obtain a statement in reply from the respondent, there is no record of a statement in reply having been filed.

[3] Notwithstanding that, I determined that the matter should proceed to an investigation meeting and that meeting took place on 23 August last at which the respondents were represented by Mrs Pederson.

[4] Ms Bremner said that she was owed ordinary wages of \$920.00 for the period from 18 January to 28 January, that she was owed \$1,160.00 for wages in lieu of notice (notice being on the agreed basis of 14 days rather than the month stipulated in her employment agreement), \$266.80 for holiday pay due at the termination of her employment and \$70 in the filing fee for the matter to be considered by the Authority. The total of these sums amount to \$2,346.80 gross and a further \$70 net in respect to the filing fee, making an aggregate figure of \$2,416.80 in total.

[5] Mrs Pederson argued that, while it was accepted that wages were owed to Ms Bremner, the amount was in dispute, principally because it was contended by Mrs Pederson that Ms Bremner worked (or more accurately claimed payment) when she was either not required to work or indeed did not work at all.

[6] Further, Mrs Pederson argued that the respondents were unable to pay because they had financial problems. Mrs Pederson contended that she had endeavoured to settle matters at a reduced figure with the nanny agency that had arranged Ms Bremner but had not been successful.

[7] The contention that Mrs Pederson makes that Ms Bremner is not entitled to the full amount claimed because she did not actually work the hours for which she was paid needs to be addressed. The evidence was that the Pedersons were required by the nanny agency to file an attendance variation worksheet in respect to any times that Ms Bremner was not actually in attendance or any times where, for whatever reason, they did not consider that full payment was due. The nanny agency made clear that the *default* position was that in the absence of a filing of a variation by way of the attendance variation worksheet, Ms Bremner would be paid the normal span of hours that she was contracted to perform.

[8] Given that these attendance variation worksheets were not filed by Mr or Mrs Pederson, it seems to me to follow that Ms Bremner is entitled to full payment and there really can be no legitimate argument about whether she was entitled to payment for the normal span of hours or not. Clearly, had the Pedersons had a legitimate grievance about the hours that she worked they had a mechanism for dealing with that but for whatever reason did not use it.

[9] In respect to the period of notice, Ms Bremner gave evidence that she had agreed with Mr Pederson that she would accept two weeks' notice rather than the four weeks provided for in the employment agreement and despite the fact that she had not been paid for even the reduced period of notice or indeed for the other sums that she claimed were owed to her, Ms Bremner confirmed to me that she was prepared to settle for the sum that she had agreed to, notwithstanding her rights under the agreement.

Process

[10] At the end of the hearing of the evidence from the parties, I indicated that I saw the matter in clear terms and that there seemed to be no doubt whatever based on the evidence that I had heard that Ms Bremner was owed the sums claimed and indeed that in respect to the notice period she could actually have claimed more than she was asking for. I indicated to the parties that they might well think it appropriate to try to resolve matters by agreement before I issued a determination and I undertook to stay my hand to give them that opportunity.

[11] I arranged for a mediator from the Department of Labour to assist the parties in their attempt to resolve matters and a record of settlement was entered into on 23 August 2005, relevant terms of which are as follows:

- 3) *Chris and Christina Pederson agree that they owe wages of \$2,416 to Sarah Bremner.*
- 4) *The parties are to mutually agree to a payment schedule by Wednesday, 21st September 2005, if there is no mutually agreed payment schedule by Wednesday, 21st September 2005 the total debt owing shall become a debt due and payable immediately. This shall be paid to Sarah Bremner by way of direct credit.*

[12] By close of business on 21 September 2005, I had been advised by the Department of Labour mediator that the respondents were not able to agree to a payment schedule, ostensibly on the basis that they were impecunious. Subsequent to that advice being communicated to me, Ms Bremner advised an Authority support officer that the Pedersons had not agreed the payment schedule by 21 September as required by the record of settlement and accordingly a determination on the matter was required from the Authority.

Compliance order

[13] Section 138 (1) (a) allows the Authority to issue a compliance order on its own motion and I now take that step in respect to the record of settlement entered into between the parties dated 23 August 2005.

[14] I now order the respondent to pay the applicant the following sums:

- (a) \$920.00 gross in wages for the period from 18 January to 28 January 2005
- (b) \$1160.00 gross for wages in lieu of notice
- (c) \$266.00 gross in holiday pay
- (d) \$70.00 net by way of filing fee for the application to the Employment Relations Authority

[15] The aggregate sum due and owing by the respondents to the applicant, which the respondents have agreed they owe by way of the record of settlement dated 23 August 2005 is \$2416.00. That amount is to be paid by direct credit to Ms Bremner from Mr and Mrs Pederson within seven (7) days of the date of this determination.

[16] For her part Ms Bremner is to ensure that, whether through PORSE Network (nanny agency) or otherwise, the income tax impost on those gross sums in the payment required to be made by Mr and Mrs Pederson is duly and properly accounted for to the Inland Revenue Department.

James Crichton
Member of Employment Relations Authority