

contact it in respect of this matter. However a business advisor, Mr Ram, attended the investigation meeting on its behalf. Mr Ram was not in a position to do more than convey a brief statement from the company's director, Sataya Pillay.

The payments sought

1. Time off in lieu of overtime

[5] There was a written employment agreement, although neither party produced a copy. However it was common ground that the agreement permitted time off in lieu of overtime. The agreement also required that the time be utilised within one month of the entitlement accruing.

[6] The fact of the deduction indicates CINZ would say none of the 17 days in question concerned time taken in lieu within one month of the entitlement arising. Mr Brown says he completed the necessary forms in that respect. The records have not been produced. Mr Brown says the deductions were not correctly made, and in the absence of any evidence to the contrary I accept what he says.

[7] CINZ is to pay to Mr Brown the equivalent of 17 days' pay in respect of his entitlement to annual leave.

[8] A final pay advice slip forwarded to Mr Brown by emailed message dated 28 April 2008 records that Mr Brown was on a salary of \$60,000 per annum, and his final holiday pay was \$4,353.78 (gross). A payslip dated 21 May 2008 indicates that amount was the equivalent of 18.54 days' pay. The equivalent of 17 days' pay is $17/18.54 \times \$4352.78 = \3991.22 . Payment in that sum is ordered accordingly.

2. Payment in respect of course of study

[9] An agreement dated 15 February 2007 provided:

“In recognition of your efforts and your desire to extend your learning, Cohesive Integration would like to offer you the following:

- 1...
2. Training to the value of \$2,500.

Upon acceptance of this offer Cohesive have the following expectations:

1. Your training will be completed in your own time.
2. Training will be completed within a period of 18 months.
3. You commit to an employment period of no less than 12 months from the commencement of training.
4. Should you decide you no longer wish to be employed by Cohesive within that 12 month period, your training costs to be reimbursed to Cohesive by you upon departure.”

[10] Mr Brown is a computer systems engineer and was about to embark on a 7-paper certification course with a registered provider. To that end he purchased books to the value of \$459.99 using a CINZ credit card. The company offset that amount against the remainder of Mr Brown’s final pay.

[11] In a letter dated 2 May 2008 CINZ asked Mr Brown to advise of:

“... the amount paid for your training in lieu of which you were bonded to work for Cohesive Integration (NZ) Limited for 18 months to 2 years”.

[12] I infer that the company made a deduction in respect of the cost of training in reliance on the view of the bonding period it expressed in the letter. However the view did not accurately state the relevant terms of the agreement. Paragraphs 3 and 4 of the agreement, as set out above, amount to a bonded period of 12 months from the commencement of training.

[13] Although full time study was available for the course Mr Brown was pursuing it was also possible for students to work in their own time, and sit the requisite examinations when they advised the provider they were ready. Mr Brown chose the latter. Accordingly identifying a date of commencement of training is not straightforward. However if I accept training began when Mr Brown purchased the books, then he had remained in his employment for ‘no less than 12 months from the commencement of training.’

[14] Accordingly the bond no longer applied. The company's view to a different effect meant Mr Brown did not receive payment for the 1.54 days' pay remaining after the deduction in respect of time off in lieu. CINZ is ordered to pay Mr Brown the sum of \$361.56 (gross) in respect of the remaining 1.54 days.

Summary of orders

[15] Cohesive Integration (NZ) Limited is ordered to pay to Mr Brown:

- (a) \$3,991.22 (gross) in respect of annual leave wrongly deducted; and
- (b) \$362.56 (gross) for the balance of the final holiday pay owed; and
- (c) \$70 in respect of the filing fee in the Authority.

R A Monaghan

Member of the Employment Relations Authority