

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 368/07
5104644

BETWEEN KYM ARTHUR BROWN,
Applicant

AND NEIL TIMBER LTD
Respondent

Member of Authority: Yvonne Oldfield

Representatives: Mr Brown in person
No appearance for the respondent

Investigation Meeting: 20 November 2007

Determination: 26 November 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] I understand that this employment relationship has arisen as a result of the respondent company encountering financial difficulties in the latter part of this year. Upon realising what was happening to the company, Mr Brown gave notice and on 19 October 2007 he left to take up another job. However he says he never received his final week's wages or his holiday pay. The Authority has now been told by both parties that the company is insolvent and has ceased trading. Mr Brown is concerned that as a result it may be wound up and on these grounds has sought and been granted urgency in relation to the investigation of his employment relationship problem.

[2] In Mr Brown's statement of problem he claimed that he was owed nine days pay plus holiday pay which was not quantified. When I met with him he told me that early this year he took leave of absence for a period and was paid all outstanding holiday pay at that point. He said he was therefore owed holiday pay on earnings for the latter part of this year.

[3] On the morning of the investigation meeting Mr Boaden, the director of the respondent company, spoke by telephone to an Authority support officer and advised that he would not be able to attend the meeting. However he confirmed that the respondent was insolvent and had ceased trading. He also confirmed that the respondent had not paid Mr Brown his final week's wages or his holiday pay and advised that he would fax to the Authority pay advice slips confirming the sums involved.

[4] A cover letter and two pay advice slips arrived by fax shortly before the meeting was about to start. All three bore the name Neil Timber Ltd.

[5] The first slip was for the period ending 08/10/07. It showed the total gross earnings for the period at \$1,016.31. It also showed a balance of "holiday pay due" as \$1,619.54. Mr Brown told me that he received his normal week's pay that week and nothing more. There would appear to have been nothing remarkable about this because it was not his final week of work.

[6] The second pay slip (stated to be for the period ending 15/10/07) sets out that the total gross earnings were \$1,792.75 (for 71 hours work at \$25.25 per hour)and that holiday pay owed was \$954.96 gross.

[7] Mr Brown told me that, notwithstanding the date on the second payslip, he understood it to cover the period right through to 19/10/07 (when he left) since it was for 71 hours rather than the 40 he worked up to 15 October. He accepts therefore that the quantum shown for outstanding wages is correct. However he was not able to shed any light on why the holiday pay figure on the slip for the final week differed from that on the one for the week before and indicated that he believed the first (higher) figure to be correct.

[8] In the hope of clarifying this issue I attempted to join Mr Boaden to the investigation meeting by speakerphone. I was unable to contact him but later in the day he responded to my messages and at 2.10pm I was able to convene a telephone conference with him and Mr Brown. Mr Boaden was not, as it turned out, able to explain the payslips and told me he would need to ask the company's former pay clerk

to help him. I advised that he had until midday Monday, 26 November, to provide further information on this issue to the Authority.

[9] An exchange of correspondence followed (via the Authority). The net result was that Mr Boaden accepted that he was not able to give a reliable explanation for the change in the holiday pay figure. Since the responsibility to keep wage and time records rests with the employer, Mr Brown must get the benefit of the doubt on this point. I take the first figure as the correct one.

[10] **On that basis I conclude that the respondent owes the applicant the following sums:**

- **Arrears of wages: \$1,792.75 gross;**
- **Holiday pay: \$1,619.54 gross.**

[11] Mr Brown is also entitled to recover the filing fee he paid in the Authority. **The respondent is therefore further ordered to pay the sum of \$70.00 in respect of that cost.**

Yvonne Oldfield

Member of the Employment Relations Authority