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Browne v Mani (Christchurch) [2018] NZERA 1111; [2018] NZERA Christchurch 111 (7 August 2018)

Last Updated: 15 August 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH		
		[2018] NZERA Christchurch 111 3027151
	BETWEEN	STEPHANIE BROWNE Applicant
	A N D	ASHWIN MANI First Respondent MANIS AGED CARE LTD Second Respondent
Member of Authority:	Peter van Keulen	
Representatives:	Applicant in person No appearance by or for Respondents	
Investigation Meeting:	3 August 2018 by telephone	
Oral Determination issued:	3 August 2018	
Written Determination issued:	7 August 2018	
ORAL DETERMINATION OF THE AUTHORITY		

This determination is a written record of an oral determination delivered on 3 August 2018.

[1] Manis Aged Care Ltd employed Stephanie Browne as a casual employee. Ms Browne says that although she was employed on a casual basis, she worked regular shifts for Manis Aged Care, including the same shifts on Monday and Tuesday.

[2] In December 2016, January 2017 and February 2017 there were five public holidays that fell on Mondays and Tuesdays. Ms Browne says she did not work these public holidays and was not paid for her normal shifts on those days.

[3] Ms Browne she says the five public holidays, which she did not work, were otherwise working days for her and she should have been paid for them. Ms Browne has applied to the Authority for payment for these public holidays.

[4] Ms Browne issued her statement of problem against Ashwin Mani, as he was, as far as she was aware, the owner of the rest home business she worked at.

[5] Mr Mani was served with the statement of problem on 7 April 2018, with Mr Mani confirming receipt by signing for the delivery. Despite receiving the statement of problem, Mr Mani did not respond to it.

[6] As there was no response from Mr Mani, I reviewed the statement of problem and the pay records included with it to establish if I could issue a determination on the papers. Two issues arose for me. The pay records indicated Ms Browne was a casual employee and that her employer was Manis Aged Care rather than Mr Mani.

[7] So, I could not proceed as I needed to be satisfied that the claim was against the right party and that Ms Browne was entitled to payment for the unworked public holidays as the days were otherwise normal working days for her.

[8] As these two issues were straightforward and could be resolved with a review of the employer's wage and time records I dispensed with holding a case management conference and issued a notice of direction. My notice of direction recorded:

- a. That in order to resolve Ms Browne's claim I needed to establish whom the correct employer was and whether Ms Browne's normal working days included Mondays and Tuesdays.
- b. That I intended to resolve the two issues by reviewing the wage and time records of the employer.
- c. That Mr Mani, in either his capacity as employer of Ms Browne or a director of Manis Aged Care¹, was to provide the wage and time records for Ms Browne.

¹ I note that subsequent to my notice of direction being issued and served on Mr Browne he was removed as a director of Manis Aged Care such that he is not currently a director of Manis Aged Care.

- d. If, on completion of my investigation, I was satisfied that Manis Aged Care was the employer of Ms Browne then I would join the company to the claim.

[9] Despite the notice of direction being served on Mr Mani in his own capacity and as a director of Manis Aged Care on 10 July 2018, again with Mr Mani confirming delivery by signing for receipt, the wage and time records for Ms Browne were not lodged with the Authority.

[10] I am satisfied that:

- a. Mr Mani and Manis Aged Care were aware of the claim Ms Browne was making.
- b. Manis Aged care knew that it would be joined as a party to Ms Browne's claim.
- c. Both parties chose not to engage in my investigation, either by providing a statement in reply or lodging the wage and time records as directed.
- d. Both parties knew that I would proceed to investigate this matter without them if they chose not to engage.

[11] As I could not resolve this matter on the pay information provided by Ms Browne alone, I then set this matter down for a brief investigation meeting with Ms Browne.

[12] I conducted that short investigation meeting. Having completed my investigation into this matter, I conclude:

- a. Manis Aged Care was Ms Browne's employer.
- b. Ms Browne worked a regular shift pattern that meant Mondays and Tuesdays were normal working days for her.
- c. Ms Browne did not work public holidays on 26 and 27 December 2016, 2 and 3 January 2017 and 6 February 2017, which all fell on Mondays or Tuesdays.
- d. As a result, Ms Browne is entitled to payment for these unworked public holidays, as they were otherwise normal working days for her.²

Determination

[13] I join Manis Aged Care Ltd to this claim.

[14] I make an order that Manis Aged Care is to pay Ms Browne \$329.40 (gross) for public holidays she did not work which were otherwise normal working days for her.

[15] I also award interest on this sum of \$16.97.

[16] I make no orders against Mr Mani, as he was not Ms Browne's employer.

Costs

[17] Ms Browne is entitled to the filing fee on the statement of problem. I order that Manis Aged Care Ltd pay Ms Browne the sum of \$71.56.

Peter van Keulen

Member of the Employment Relations Authority

2 Pursuant to [s 49](#) of the [Holidays Act 2003](#).

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