



# New Zealand Employment Relations Authority Decisions

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## Bruce v Whelan (Christchurch) [2017] NZERA 1086; [2017] NZERA Christchurch 86 (30 May 2017)

Last Updated: 10 June 2017

### IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

[2017] NZERA Christchurch 86  
3004591

BETWEEN DANIELLE BRUCE Applicant

AND PAUL WHELAN Respondent

Member of Authority: Andrew Dallas

Representatives: Applicant in person

No appearance for the Respondent

Investigation Meeting: On the papers

Determination: 30 May 2017

#### DETERMINATION OF THE AUTHORITY

**A. Paul Whelan must pay Danielle Bruce \$1,800 gross as unpaid holiday pay within 28 days of the date of this determination**

**B. Mr Whelan must also pay Ms Bruce within 28 days of the date of this determination \$71.56 as reimbursement of the Authority's filing fee**

#### Employment relationship problem

[1] Danielle Bruce was employed by Paul Whelan at two video store franchises in Dunedin between August 2014 and December 2016. Ms Bruce claims she is owed unpaid holiday pay.

[2] Ms Bruce sought to recover these outstanding amounts from Mr Whelan. Ms Bruce's efforts over several months proving fruitless, she made a complaint to the Labour Inspectorate. The Labour Inspectorate managed to resolve part, but not all, of Mr Bruce's claim against Mr Whelan. Mr Whelan failed to provide the Labour Inspectorate with Mr Bruce's leave records for a period August 2014 to August 2016.

#### Issue

[3] The following is the issue for determination by the Authority: (ii) Is Ms Bruce owed unpaid holiday pay by Mr Whelan?

#### The Authority's investigation

[4] Ms Bruce lodged a statement of problem in Authority seeking payment of the outstanding holiday pay.

[5] Mr Whelan did not lodge a statement in reply or seek leave to lodge one out of time. However, he engaged intermittently in the Authority's processes. Mr Whelan appeared to suggest that if there had been a default in the payment of holiday pay to

Ms Bruce, he would pay any outstanding amount. Having regard to the Authority's primary role of resolving employment relationship problems, Mr Whelan was given an opportunity to do so. However, for reasons known only to him, Mr Whelan did not avail himself of it.

[6] Having taken into account the surrounding circumstances outlined above, I decided to investigate Ms Whelan's employment relationship problem on the papers under [s 174D](#) of the [Employment Relations Act 2000](#) (the Act).

[7] As Labour Inspectorate had sought leave records from Mr Whelan and these were not forthcoming, Ms Bruce was asked by the Authority to quantify her claim for unpaid wages.

[8] Mr Bruce subsequently provided these calculations to the Authority. Ms Bruce said she was owed \$1,800 gross as unpaid holiday pay by Mr Whelan.

[9] In response to the above information, I formed the view, in reliance on s

132(2) of the [Employment Relations Act 2000](#), an order for payment of \$1,800 gross as unpaid holiday pay should be made.

[10] On 15 May 2017, a Member's Minute was issued to the parties setting out the nature of Ms Bruce's employment relationship problem. Mr Whelan was asked to provide written comment on Mr Bruce's claim for unpaid holiday pay by 29 May

2017. Mr Whelan provided no such written, or other, comment.

### **Ms Bruce's claim for unpaid holiday pay**

[11] Ms Bruce claimed that she was owed outstanding holiday pay. She claimed the amount owed in unpaid holiday pay was \$1,800 gross. Ms Bruce provided calculations and other information to justify this claim.

[12] Mr Whelan failed to produce wage and time records to assist Ms Bruce in the calculation of the claim for unpaid holiday. In the absence of any information from Mr Whelan disproving the claim and in reliance on [s 132\(2\)](#) of the Act, I accept Ms Bruce's claim for unpaid holiday pay.

[13] Mr Whelan must pay Ms Bruce \$1,800 gross as unpaid holiday pay within 28 days of the date of this determination.

### **Costs**

[14] It is fair and reasonable in all the circumstances to require Mr Whelan to reimburse Ms Bruce for the Authority's filing fee of \$71.56. This amount must also be paid to Ms Bruce within 28 days of the date of this determination.

Andrew Dallas

Member of the Employment Relations Authority