

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 273/07
5049953

BETWEEN Rozlin Buksh
AND Home Investment Group Ltd

Member of Authority: Janet Scott
Representatives: Applicant in person
 Stuart Brauninger for Respondent
Investigation Meeting: 24 April 2007
Submissions received: 2 August 2007 for applicant
 28 August 2007 for respondent (last date for receipt of
 submissions – none received)
Determination: 04 September 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant has brought a claim in the Authority for wages, holiday pay and public holiday pay alleged to be owed to her by the respondent.

Background

[2] My investigation has led me to the following findings of fact in relation to Mrs Buksh's employment with the respondent:

- Mrs Buksh was employed by the respondent as an office worker. She commenced her employment on 25 November 2004. At that time she worked 15 hours per week. She was paid \$10.50 per hour. Two weeks later she commenced working 35 hours per week (Monday to Friday) and her hourly

rate was increased to \$12. Mrs Buksh was apparently treated as a casual employee at this time and she was not paid public holiday pay.

- On 19 May 2005 the parties entered into a written employment agreement. Mrs Buksh continued to work 35 hours per week and her rate was increased to \$13 per hour. From this time she was paid for public hours that fell on days that would otherwise be working days for her.
- On 5 June 2006 Mrs Buksh's hourly rate was increased to \$14 per hour and she was advised she would be entitled to four weeks annual leave.
- Mrs Buksh received her normal pay on 7 July 2006. She was not paid after this. However she did continue working until 9 August when she resigned giving one weeks notice. Discussions were held between Mrs Buksh, Mr Brauninger and Mr Cooper (managers and directors of the company). As a result of these discussions Mrs Buksh was paid two net sums amounting to \$1,300 being part payment of her wages up to 4 August. Mrs Buksh withdrew her resignation.
- Mrs Buksh received no further wages and she abandoned her employment for this reason during the week of 1 September 2006.

[3] I also find that Mrs Buksh was a permanent part-time employee of the respondent from the time she commenced her employment on 25 November 2004. As a result Mrs Buksh is entitled to be paid for all public holidays that fell on days that would otherwise have been working days for her.

The Investigation Meeting and Subsequent Events/Investigations

[4] On 24 April 2007 the Authority convened an Investigation Meeting with the parties to consider the applicant's claims. It was agreed at that meeting that the respondent would pay to the Mrs Buksh the net sum of \$2084.40 to settle her claims. This sum was to be paid to her bank account on or before 2 May 2007. I advised the parties that if the payment was made I would issue a Consent Determination to give finality in the matter.

[5] Unfortunately the respondent did not abide by the agreement reached and on 3 May 2007 I advised Mr Brauning by letter:

“As I advised you at the time¹ if there was no payment on the basis of the proposed consent agreement, I would put the facts to one of our Labour Inspectors to have him calculate Mrs Buksh’s entitlements”.

[6] As advised the Labour Inspector commenced an investigation into Mrs Buksh’s claim. He concluded that arrears of wages, annual holiday pay and public holiday pay in the sum of \$3,738.80 gross was owing to Mrs Buksh.

[7] The Authority reviewed the Labour Inspector’s assessment and prepared a Memorandum to the parties (dated 16 July) explaining the assessment and advising it was accepted by the Authority as a correct statement of the arrears owed to Mrs Buksh. The parties were advised of their right to make submissions on the assessment prior to the Authority issuing a Determination in the matter. The parties were given 21 days from date of receipt or service of the Authority’s memorandum to provide written submissions in the matter.

[8] The applicant responded to the Authority’s communication in a letter dated 30 July. She advised she accepted the Labour Inspector’s assessment and the Authority’s proposed Determination based on that assessment.

[9] Effecting service of the Authority’s Memorandum on the respondent has been more problematic. I am however satisfied that the Memorandum with Labour Inspector’s report attached was served on the respondent on 6 August 2007 by affixing it to the front door of the registered office of the company.

[10] In accordance with my advice to the respondent it had 21 days from 6 August 2007 to provide the Authority with written submissions on the proposed Determination. That time has now passed and I now issue my Determination in the matter of the arrears payable to Mrs Buksh.

Determination

[11] I direct the respondent to pay to the applicant the sum of \$3,738.80 gross as arrears of wages, annual holiday pay and public holiday pay owing to her.

[12] I also direct the respondent (pursuant to my powers under Clause 11 of the Second Schedule of the Employment Relations Act 2000) to pay interest on the above sum at the rate of 10% per annum from the date of this Determination until the date of payment.

[13] I also direct the respondent to pay to the applicant the sum of \$70 net to reimburse her for the filing fee incurred by her in bringing this matter to the Authority for resolution.

Janet Scott
Member of the Employment Relations Authority

¹ At the Investigation Meeting on 24 April 2007