

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 141/10
5289720

BETWEEN

SIMON BURROWES
Applicant

A N D

THE CLUB AT TERRACE
DOWNS LIMITED
Respondent

Member of Authority: Philip Cheyne

Representatives: Simon Burrowes, the Applicant in person
No appearance for the Respondent

Investigation Meeting: 1 July 2010

Determination: 1 July 2010

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Simon Burrowes worked for The Club at Terrace Downs Limited for some years before he was dismissed for redundancy in November 2009. Mr Burrowes says that he was not paid all the holiday pay owed to him when he was dismissed and he seeks to recover those arrears. The company says that Mr Burrowes did not complete appropriate documentation when going on holiday and is not owed the sum claimed by him as holiday pay.

No appearance by the respondent

[2] Mr Burrowes lodged his statement of problem on 29 March 2010. I am satisfied that it was served on the company on or before 7 April 2010. On that day the company by email from Colin Cadigan requested an extension until 14 May 2010 to lodge a statement in reply. At my direction a phone conference was arranged for

8 April at an agreed time to discuss the request and progress the Authority's investigation. An hour before the agreed time Mr Cadigan left a message for the Authority Support Officer saying that he was required elsewhere and would not be available. I proceeded with the phone conference with just Mr Burrowes. Arrangements were made for an investigation meeting. I am satisfied from the file that the notice setting out those arrangements and the notice of investigation meeting were served on the company as well as sent to Mr Cadigan by email. The Authority received a statement in reply from the company on 14 May 2010 and a statement of evidence by Mr Cadigan on 22 June 2010.

[3] There was no appearance by the company this morning. The Support Officer rang Mr Cadigan's cell phone but only got a message. After allowing some time in case Mr Cadigan was running late I decide to proceed in the absence of any representative from the company.

Arrears

[4] From January 2008 the company and Mr Burrowes agreed that he would be paid an annual salary (\$60,000pa) with an obligation for him to meet performance standards regardless of the days or hours of work required to meet those standards. At some times of the year more work was required than at other times. No specific days or hours of work were specified. That differed from the previous arrangement where Mr Burrowes was required to complete time sheets and was paid an hourly rate. There is no suggestion that Mr Burrowes did not meet the required performance standards.

[5] The company's position seems to be that Mr Burrowes was owed \$3486.66 (gross) as holidays and accrued holiday pay from which must be deducted the value of an unspecified number of days on which he should be regarded as having taken annual leave because he apparently went snowboarding or was elsewhere rather than working. Despite the apparent acceptance that some holiday pay might be owed, nothing was paid to Mr Burrowes. The problem with the company's position is that under the employment arrangement Mr Burrowes did not have to work on any particular days provided he met the performance standards.

[6] Mr Burrowes provided me with his final payslip. The computerised pay system records him as entitled to 14.1 days holiday plus 5.97 days accrued, a total of

20.07 days. The daily rate is \$230.77. It follows that Mr Burrowes was owed \$4,631.55 (gross) holiday pay at the end of the employment.

Orders

[7] The Club At Terrace Downs Limited is to pay to Mr Burrowes the sum of \$4,631.55 (gross) as arrears of holiday pay.

[8] Mr Burrowes incurred the cost of the lodgement fee. The Club At Terrace Downs Limited is to pay \$70.00 in costs to Mr Burrowes to reimburse him.

[9] There was no claim in the statement of problem for penalties or interest.

Philip Cheyne
Member of the Employment Relations Authority