

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
ER AUTHORITY AUCKLAND OFFICE**

BETWEEN Oona Busby
AND Talent Base Limited
REPRESENTATIVES Michael Smyth, counsel for Oona Busby
No appearance for Talent Base Limited
MEMBER OF AUTHORITY Rosemary Monaghan
INVESTIGATION MEETING 02 June 2006
DATE OF DETERMINATION 02 June 2006

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Oona Busby says her former employer, Talent Base Limited ("TBL") owes her money as unpaid holiday pay, wages and commissions.

[2] An application for a penalty was withdrawn at the investigation meeting.

[3] TBL did not attend the meeting. It has not responded to any approaches from the Authority regarding the investigation of this problem, and did not file a statement in reply. However the statement of problem and notice of investigation meeting were served on it at its registered office and address for service. It therefore has notice of the problem and of the investigation meeting. Since it has failed to show good cause for its failure to attend or be represented at the investigation, I have proceeded in its absence under clause 12, Schedule 2 of the Employment Relations Act 2000.

Order for payment

[4] TBL employed Ms Busby as talent manager, commencing on 7 November 2005. The parties' written employment agreement provided that Ms Busby be paid a salary of \$38,000 per annum, plus commissions according to a sliding incentive scheme. The scheme was set out as follows:

7.2 Incentives

The employee shall be entitled to receive Incentives in addition to their base salary of \$38,000 per annum on the following basis.

...

[billings] NZ Dollars		
0 - 12000		0%
12001 - 15000		15%
15001 - 22000		20%
22001 - 28000		25%

The employee's pay shall be paid Monthly and Quarterly into a bank account nominated by the employee. 50% of the incentive shall be paid, on the calendar month following, with 50% being paid as a collective bonus quarterly.'

[5] On 7 April 2006 Ms Busby resigned, giving the required four weeks' notice. The parties agreed on a termination date of 30 April 2006. On 12 April 2006 Ms Busby was placed on garden leave until the end of her employment.

[6] A fortnightly salary payment was due to Ms Busby on 25 April 2006, but she did not receive it. Nor did she receive any further payments of wages or commission. In addition her regular salary payments tended on occasion to be over or underpaid. Overall she says she is owed:

- (a) \$2,132.17 as unpaid wages and holiday pay (less holidays taken); and
- (b) \$10,485.37 as unpaid commissions.

[7] In support of her calculation of unpaid commissions Ms Busby produced a schedule of placements, invoices, and talent manager responsible covering the period December 2005 – April 2006.

[8] I accept that Ms Busby is owed the amounts she says she is. TBL is therefore ordered to pay her the sum of \$12,617.54 (gross).

Costs

[9] TBL is further ordered to pay Ms Busby the sum of \$70 as reimbursement of the fee for filing this problem, and \$750 as a contribution to her costs of representation.

Rosemary Monaghan
Member of Employment Relations Authority