

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 227
3003575

BETWEEN TAI CHENG AU
 Applicant

A N D STYLE HAIRDRESSING (2012)
 LIMITED
 Respondent

Member of Authority: Rachel Larmer

Representatives: Ian Westwood, Advocate for Applicant
 Annie Talakai, Advocate for Respondent

Investigation Meeting: On the papers

Submissions: 10 July 2017 from Applicant
 19 July 2017 from Respondent
 24 July 2017 from Applicant

Date of Determination: 01 August 2017

**DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

Employment relationship problem

[1] Mr Tai Cheng Au is known as Steven Au. Mr Au was employed by Style Hairdressing (2012) Limited (Style Hairdressing) from 20 November 2012 until 07 June 2016.

[2] Mr Au succeeded in his claims against Style Hairdressing. He was awarded partial remedies in the Authority's substantive determination dated 28 June 2017¹ with the parties being encouraged to reach agreement on the amounts that at that time the Authority did not have sufficient information to fix.

¹ [2017] NZERA Auckland 184.

[3] Agreement was not reached so Mr Au has applied to the Authority to fix his remaining remedies.

[4] Remedies have been calculated based on Mr Au's contractual rate of pay of \$18.50 per hour. For most of his employment he was to be paid based on 40 hours per week as specified in his employment agreement. However the parties agree that Mr Au would only work and be paid for 39 hours per week during weeks within the period 18 April 2013 to 17 December 2015 during which he took an extra half hour unpaid time off work to collect his daughter from school. This is discussed in the substantive determination.

[5] I have used the calculations submitted by Mr Au and not by Style Hairdressing when determining remedies because I consider Mr Au's approach aligns with the Authority's determination.

[6] Mr Au's leave anniversary date for calculating annual holiday entitlements is 18 November.

[7] The cashing up of 38.5 hour of Mr Au's annual holiday for the week ending 15 May 2016 does not form part of the calculation of wage arrears as that was not payment for hours he worked but was instead paid out in advance as part of his overall annual holiday entitlement. The calculations used for Mr Au's annual holiday entitlement are based on the dates recorded in Style Hairdressing's annual leave report.

[8] Within 28 days of the date of this determination Style Hairdressing is ordered to pay Mr Au:

- a. \$10,123.18 wage arrears for days and hours worked but which were underpaid;
- b. \$4,916.93 underpaid annual holiday entitlements;
- c. \$451.20 employer's compulsory KiwiSaver contribution on wage and holiday entitlement arrears;
- d. \$890.40 interest on wage and annual holiday and employer KiwiSaver contribution arrears ($5\% \times \$15,491.31 = \2.21×420 days) for period 07 June 2016 to 01 August 2017.

[9] Interest continues to run on the total amount awarded under paragraph [6] above of \$16,381.71 at the current prescribed rate of 5% per annum being \$2.24 per day from the date of this determination until that amount has been paid in full.

Rachel Larmer
Member of the Employment Relations Authority