

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 349/07
AEA 106/05

BETWEEN PETER CHIU
 Applicant

AND JOHN GILBERT & COMPANY
 LTD
 First Respondent

Member of Authority: Vicki Campbell

Representatives: John Coyle for Applicant
 Clive Bennett for Respondent

**Determination on the
papers**

Submissions Received: 27 April 2007 from Applicant
 8 June 2007 from Respondent

Determination: 12 November 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] In a determination dated 6 April 2006, I dealt with a number of claims by both Mr Chiu and John Gilbert & Company Ltd ("John Gilbert"). A claim relating to meal allowances was not finalised in that determination and the parties have been unable to resolve the problem between themselves. I left it open for the parties to return to the Authority for a determination of the matter in that event.

[2] I am now in receipt of submissions from both parties and will proceed to determine this matter on the papers.

[3] Mr Chiu's employment agreement provided for the payment of a Meal Allowance where Mr Chiu worked nine hours and provided work continued; and, after working four and a half hours on a rostered day off or statutory holiday. The payment of the allowance was subject to a meal not being provided by John Gilbert and was set at \$7.81 per meal.

[4] In my determination of 6 April 2006, I reminded the parties that the obligation is on Mr Chiu to satisfy me that there is a factual basis for his claim.

The evidence of the calculations on which the claim was made, which was provided to the Authority, was unsatisfactory. The claim was based on a best guess at what meal allowances were due to be paid to Mr Chiu and not based on any reliable record.

[5] The uncontested evidence from the respondent at the investigation meeting was that Mr Chiu would sometimes partake of meals with the other staff when working late, and at other times would, himself, arrange to purchase meals with his company visa card.

[6] There has been no allowance or acknowledgement, in his claims to recognise the occasions on which Mr Chiu was known to have received a meal provided by the respondent.

[7] In my earlier determination I found that Mr Chiu would habitually work overtime when not required. This occurred to such an extent that steps were taken by the respondent to prevent Mr Chiu from working overtime. The evidence showed that Mr Chiu never heeded the respondent's requests for him not to work so many hours. There has been no accounting by Mr Chiu, in his application, for the hours he worked voluntarily for the respondent over and above his normal hours of work.

[8] It is for Mr Chiu to satisfy me that his claim has some foundation. I find that overall the evidence provided to the Authority is inadequate evidence on which to base a determination and the claim must fail.

Costs

[9] Costs relating to this determination are reserved. In the event that costs are sought, the parties are encouraged to resolve that question between them. If the parties fail to reach agreement on the matter of costs, the parties may file and serve a memorandum as to costs within 28 days of the date of this determination. I will not consider any application outside that timeframe.

Vicki Campbell
Member of Employment Relations Authority