

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 464
5465845

BETWEEN DEVI DUTT
 Applicant

AND 510 HOSPITALITY LIMITED
 Respondent

Member of Authority: Vicki Campbell

Representatives: Applicant in Person
 No appearance for Respondent

Investigation Meeting: 12 November 2014

Determination: 13 November 2014

DETERMINATION OF THE AUTHORITY

- A. The respondent, 510 Hospitality Limited, is ordered to pay the applicant the amount of \$3,369.22 gross as payment in lieu of notice, within 14 days of the date of this determination.**
- B. The respondent, 510 Hospitality Limited, is ordered to pay the applicant the amount of \$2,526.93 gross for unpaid holiday pay within 14 days of the date of this determination.**
- C. The respondent, 510 Hospitality Limited, is ordered to pay the applicant the amount of \$168.46 gross for an alternate holiday accrued but not taken at termination within 14 days of the date of this determination.**
- D. The respondent, 510 Hospitality Limited, is ordered to pay to the applicant, the filing fee of \$71.56 within 14 days of the date of this determination.**



Employment relationship problem

[1] Mr Devi Dutt claims he is owed four weeks wages in lieu of notice, unpaid holiday pay and three day's pay for public holidays he did not work but would otherwise have worked, had the day's not been public holidays.

[2] On 3 July 2014 Ms Joti Jain, on behalf of the respondent, wrote to the Authority by email confirming that there is money owed to Mr Dutt.

No appearance for respondent

[3] Following receipt of the email from Ms Jain the parties were referred to mediation. After some difficulties in arranging dates for the mediation with the respondent, mediation was set down for 2 October 2014.

[4] The respondent did not attend mediation. The Authority set up a case management conference call which was held on 9 October 2014. The respondent did not attend that call.

[5] By Minute dated 9 October 2014 the Authority detailed a timetable for the exchange of information including a request for a copy of a printout referred to by Ms Jain in her email response dated 3 July 2014.

[6] The applicant had previously consented to the Authority dealing with the matter on the papers alone. The Authority offered the respondent the opportunity to advise the Authority of any objections to progressing matters in this way. No correspondence has been received from the Respondent.

[7] In the absence of any further engagement from the Respondent the Authority set this matter down for hearing on 12 November 2014. The notice of investigation meeting was delivered and signed for by Ms Jain on 3 November 2014.

[8] Mr Dutt attended the investigation meeting and was assisted by an interpreter in the Hindi language. As the respondent was not present at the appointed start time the Authority contacted Ms Jain by telephone to ascertain her intentions. Ms Jain advised the Authority that she would not be attending the investigation meeting.



[9] The respondent has not shown any good cause for not appearing at the investigation meeting. In that event, I proceeded to investigate the matter pursuant to clause 12 of the second schedule of the Employment Relations Act 2000.

Background

[10] Mr Dutt was employed as a Chef and worked at the respondent's Masala Indian Restaurant in Mt Eden, Auckland. His employment was subject to a written employment agreement signed by the parties on 12 August 2013.

[11] Pay advice slips presented by Mr Dutt to support his application for arrears of wages indicates that initially he was paid \$15.00 per hour for each hour worked but that by the end of his employment he was paid on the basis of a salary of \$43,800 per annum which equates to a gross weekly payment of \$842.31.

Arrears of wages for unpaid notice

[12] Mr Dutt claims he is owed four weeks wages for lack of notice. In her email of 3 July 2014 Ms Jain states that she gave Mr Dutt his final notice on 28 May 2014. It seems Mr Dutt continued to work for the respondent until 30 May 2014 on which date it was agreed he would leave that night.

[13] The employment agreement at clause 13.2 provides for notice to be given by the employer of four weeks and allows the employer to exercise its discretion to pay remuneration in lieu of some or all of the notice period.

[14] I am satisfied Mr Dutt's employment was terminated on the basis of the notice provided for in the employment agreement and that he did not receive the payment of the full notice period.

[15] Mr Dutt is entitled to be reimbursed the wages owed for the four week notice period. 510 Hospitality Limited is ordered to pay to Mr Dutt the sum of \$3,369.22 gross within 14 days of the date of this determination.



Unpaid holiday pay

[16] Mr Dutt commenced employment on or about 12 August 2013. At the time his employment terminated he was entitled to be paid 8% of his gross earnings for the period of his employment.

[17] The Authority has been provided with a copy of a pay slip dated 18 May 2014 which states that Mr Dutt had accrued 15 days annual holiday. In the absence of information to the contrary I have accepted that as at the date of his termination Mr Dutt should have been paid the equivalent of three weeks holiday pay.

[18] 510 Hospitality Limited is ordered to pay to Mr Dutt the amount of \$2,526.93 gross for outstanding holiday pay within 14 days of the date of this determination.

Payment for public holidays

[19] Mr Dutt claims he is entitled to the payment of three public holidays. I am not satisfied that Mr Dutt has proven this claim. At the investigation meeting he was unable to tell me which of the 11 public holidays his claim related to.

[20] The pay slip dated 18 May 2014 indicates that Mr Dutt had one alternative holiday owing to him at termination. Mr Dutt has not been paid for that alternative holiday.

[21] 510 Hospitality Limited is ordered to pay to Mr Dutt the amount of \$168.46 gross within 14 days of the date of this determination.

Costs

[22] I order the reimbursement by 510 Hospitality Limited of the filing fee of \$71.56 within 14 days of the date of this determination.

[23] To facilitate enforcement, a certificate of determination is to issue with this determination pursuant to Regulation 26 of the Employment Relations Authority Regulations 2000.



Vicki Campbell
Member of the Employment Relations Authority

