

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 285  
5414605  
5414632  
5407021

BETWEEN JAMES ELLIS, SHARON ZER  
and TATIANA STAVROVSKA  
Applicants

A N D HYGIENE FOUNDATION  
LIMITED  
Respondent

Member of Authority: James Crichton  
Representatives: Applicants in person  
No appearance for Respondent  
Investigation Meeting: 4 July 2013 at Auckland  
Date of Determination: 5 July 2013

---

**FIRST DETERMINATION OF THE AUTHORITY**

---

**Employment relationship problem**

[1] The applicants (the applicants) all allege that they are owed unpaid wages from their employment with the respondent (Hygiene Foundation) and all claim to have been constructively dismissed from their employment by the respondent.

[2] The constructive dismissal allegation will be the subject of a subsequent determination; this determination deals exclusively with the claim for unpaid wages.

[3] Each of the applicants was employed by Hygiene Foundation in a role styled Regional Manager. Each of the applicants commenced their employment on 26 November 2012 and received an annual salary of \$78,000 gross. Each of the

applicants had an executed employment agreement. All the agreements were in exactly similar terms.

[4] Mr Ellis and Ms Starvoska both resigned their employment (they say under duress) after exactly a month's work and accordingly each of them claim a full month's pay of \$6,500 gross. Ms Zer, although she commenced employment at the same date as the other two, resigned (again allegedly under duress) somewhat earlier and so her claim is for only \$5,055.56 gross.

[5] At the investigation meeting which the Authority convened, each of the applicants gave their evidence on oath which supported the documentary material already filed in the Authority. That documentary material included in particular the individual employment agreements, duly executed, of each of the applicants together with, in each case, their letter of resignation and the acknowledgment of it from Hygiene Foundation.

[6] Hygiene Foundation did not attend the investigation meeting despite filing a statement in reply and advising the Authority in correspondence of its apparent willingness to participate in the Authority's process. In particular, Hygiene Foundation indicated that it would participate in the directions conference which resulted in the time and date for the investigation meeting being set. In fact, it did not participate in either the directions conference or the subsequent investigation meeting. The Authority is satisfied that that failure was deliberate rather than inadvertent.

[7] Accordingly, the Authority is satisfied it can safely proceed to deal with this aspect of the applicants' claims, especially as the correspondence from Hygiene Foundation just referred to appeared to commit Hygiene Foundation to making the payments of salary.

[8] However, for the avoidance of doubt, the Authority is satisfied that all of the applicants were employed by Hygiene Foundation for the periods in question, all were subject to executed employment agreements which provide for an annual salary, two worked for one month at that salary and one worked for three weeks at that salary and there is nothing before the Authority that would suggest that Hygiene Foundation contests that those periods of employment were not exactly as the documents before the Authority disclose.

[9] However, the Authority is bound to note that one of the documents provided by the applicants purports to be a calculation from Hygiene Foundation of the salary owed to each of the applicants and it is on the basis of that document, referred to as a “pay slip”, that each applicant has made their claim. There is nothing in the employment agreement that justifies the calculations provided in the respective pay slips. Each of those pay slips writes down the time that each of the applicants actually is entitled to payment for. The Authority does not accept that those pay slips accurately reflect the bargain between the parties and accordingly the orders that follow are on the basis of calculations made in accordance with the operative employment agreement.

### **Determination**

[10] The Authority is satisfied that each of the applicants is owed wages for the period of their employment with Hygiene Foundation and the orders in that regard follows.

[11] Hygiene Foundation Limited is pay to Sharon Zer the sum of \$5,055.56 and to James Ellis and Tatania Starvoska, Hygiene Foundation Limited is to pay \$6,500 each. All those sums are gross salary payments and Hygiene Foundation Limited is to account to the Inland Revenue Department for the PAYE content on each of those sums.

[12] The Authority’s investigation into the second aspect of the applicants’ claims continues.

[13] A Certificate of Determination is to issue with this determination.

James Crichton  
Member of the Employment Relations Authority