

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 153
5362229

BETWEEN GJ SHELDRAKE LIMITED
 Applicant

AND DILLON CROOKS
 Respondent

Member of Authority: Dzintra King

Representatives: G J Sheldrake for Applicant
 No appearance for Respondent

Hearing: 3 May 2012

Determination: 8 May 2012

DETERMINATION OF THE AUTHORITY

[1] The applicant, GJ Sheldrake Limited seeks to recover an overpayment of \$2,189.13 from the respondent, Mr Dillon Crooks.

[2] Mr Crooks was aware the matter would be heard on 3 May 2012. He had been informed by the Authority that he should appear.

[3] Mr Crooks does not deny that he owes the money sought by the applicant. Mr Crooks asked for and was given payment in advance so he could go to Australia to attend to family matters. There was an error in the payments subsequently made to Mr Crooks which resulted in his being paid twice. The employer asked Mr Crooks on a number of occasions to repay the money and offered to negotiate a repayment schedule.

[4] Mr Crooks did not return to work after the Christmas shutdown. He had not informed his employer of his intention to resign.

[5] The provisions of s 6 Wages Protection Act 1983 do not apply in the circumstances of this case. This applies only if the employer seeks to recover an overpayment by way of deduction from wages.

[6] An alternative basis for recovery is quasi-contract based on mistake: *McClenaghan v Bank of New Zealand* [1978] 2 NZLR 528.

[7] A claim for reimbursement of overpaid salary is an employment relationship problem. The Authority has jurisdiction pursuant to s 161 Employment Relations Act 2000.

[8] Section 94A Judicature Act 1908 provides that relief may be granted where a payment has been under a mistake of law or fact or both.

[9] Section 94B Judicature Act provides that recovery is not permissible if the money was received in good faith and the person receiving it has altered his or her position in reliance upon the payment. As I did not hear from Mr Crooks I am unable to make an assessment regarding the relevance of either of these provisions.

[10] I order the respondent to pay to the applicant the sum of \$2,189.13.

[11] The respondent is also to pay the filing fee of \$71.56 to the applicant.

Dzintra King

Member of the Employment Relations Authority