

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 185/08
5119596

BETWEEN ER LU GAO
 Applicant

AND THE PRODUCE COMPANY
 LIMITED
 Respondent

Member of Authority: Dzintra King

Representatives: Applicant In Person
 John Stokes, Advocate for Respondent

Investigation Meeting: 20 May 2008

Determination: 22 May 2008

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Ms Er Lu Gao, claims that the respondent, The Produce Company Limited, withheld \$60 gross from her wages. The respondent does not deny this but says that the applicant did not work out her notice period.

[2] The parties agree that the applicant had not sighted the company's employment agreement, which had a provision permitting deductions if notice was not given and worked out.

[3] The applicant worked one day, a Sunday, and then told Mr John Stokes, a director of the company, that she wished to resign. Mr Stokes told her that she should work out her notice, being four weeks. She did not wish to do so whereupon Mr Stokes told her that although he did not think he was obliged to pay her anything, he would pay her for half the day she had worked.

[4] Section 4 Wages Protection Act 1983 provides that there are to be no deductions from wages except in accordance with the Act. Subject to ss 5(1) and 6(2) wages are to be paid when they become payable without deduction.

[5] Section 5(1) provides that an employer may, for lawful purposes, make deductions with the written consent or the written request of the worker. This provision does not apply. No written consent or request was provided.

[6] Section 6(2) relates to the recovery of overpayments and is not applicable.

[7] While the respondent's frustration is understandable, the deduction from the applicant's wages was unlawful.

[8] The applicant also raised a concern regarding the amount she had been taxed on the \$60 gross wages and the \$4.80 holiday pay. What the respondent has done is to deduct tax for the wages that were due to the applicant, not just the wages that he paid to her. The applicant is entitled to be paid \$64.80 being the unpaid portion of the wages and the remaining portion of the holiday pay.

[9] The applicant has sought \$100 for the time and money she has spent on the case in addition to the \$70 filing fee. I am unable to make an award for the time and money spent by the applicant. However, the applicant is entitled to recoup the \$70 filing fee. The respondent is to pay the applicant \$70 in addition to the deducted wages.

Dzintra King

Member of the Employment Relations Authority