

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2012] NZERA Wellington 90
5372646

BETWEEN

CHRISTINE GARDNER
Applicant

A N D

IRELANDS ELECTRICAL
SERVICES LIMITED
Respondent

Member of Authority: G J Wood

Representatives: Christine Gardner on her own behalf
No attendance for the Respondent

Investigation Meeting: 7 August 2012

Date of Determination: 9 August 2012

DETERMINATION OF THE AUTHORITY

[1] The applicant, Ms Gardner, claims \$10,048.47 in unpaid wages, statutory and annual holiday pay and notice. She also seeks \$71.56 in expenses to cover the Authority's filing fee.

[2] Despite a number of attempts by the Authority to contact Mr David Ireland, the sole director of the respondent (Irelands Electrical), Irelands Electrical did not provide a statement in reply, nor did Mr Ireland attend on a directions conference call (even though he had been served notice of it). There was no representative of Irelands Electrical at the investigation meeting. Mr Ireland was unable to be contacted by a support officer on the morning of the investigation meeting.

[3] Given Mr Ireland's history of avoiding the investigation process, I was satisfied that no good cause had been shown for the failure of Irelands Electrical to be represented. I therefore determined to act as fully in the matter as if Irelands Electrical had been duly represented.

[4] I have accepted the evidence of Ms Gardner, which I had no reason to doubt, and much was backed by documentation provided by her. My findings are therefore as follows.

[5] Ms Gardner was employed by Irelands Electrical in January 2010. She and Mr Ireland were the sole staff engaged in the business. Ms Gardner's role was as an office person and sales representative. She was paid \$17 gross per hour, worked an average of 39.75 hours a week, and was paid monthly.

[6] After February 2011 problems began to arise with Ms Gardner's pay. She was often not paid on time and in instalments. The reason for this was poor cash flow of the business.

[7] In December Ms Gardner was only paid part of her November wages, with \$1,988 remaining outstanding. By way of letter dated 15 December 2011, Ms Gardner asked for payment of the balance of November's wages. Mr Ireland's response to Ms Gardner was that he could not afford to pay her the money outstanding.

[8] Ms Gardner had still not been paid for her last month's wages as at 22 December 2011. She therefore handed Mr Ireland a letter at the end of that day, stating that unless she got paid for her November work and was assured that she would be paid for her work in December, she would have to give notice the next day, being the last working day for the year.

[9] Mr Ireland's response the next day was that he would have to let her go as he could not afford to pay her. In effect therefore Irelands Electrical terminated Ms Gardner's employment from that date. While she was paid \$1,088 towards the outstanding November wages, she was not paid for December, nor paid for the month's notice required under the parties' employment agreement. Furthermore, Ms Gardner was not paid any holiday pay or statutory holiday pay for the Christmas period. However, the statutory holiday pay claimed by Ms Gardner overlaps with the notice period required under the employment agreement of one month and therefore to allow that claim would be double counting for that period. On the other hand, Ms Gardner has under-claimed for notice, as she has only claimed four weeks (28 days) rather than the month (31 days) that she was entitled to. I therefore reduce her

claim by \$816 gross for statutory holidays, but increase it, in equity and good conscience, by \$405.45 gross to cover for the proper period of notice.

[10] In summary, I accept that Ms Gardner is owed \$500 net for her November hours worked; that she worked 109 hours in December and was not paid for them; that she was entitled to 227.82 hours pay in holiday pay, plus 182.85 hours pay in lieu of notice. Ms Gardner is entitled to interest at the rate of 5% per annum over 230 days. She is also entitled to be reimbursed for the cost of the Authority's filing fee.

[11] I therefore order the respondent, Irelands Electrical Limited, to pay to the applicant, Ms Christine Gardner, the following sums:

- \$500 net for unpaid wages for November 2011;
- \$1,853 gross for unpaid wages in December 2011;
- \$3,872.94 gross for unpaid holiday pay;
- \$3,108.45 gross in lieu of notice;
- \$293.29 in interest; and
- \$71.56 for the filing fee.

G J Wood
Member of the Employment Relations Authority