

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2016] NZERA Auckland 229
5577843

BETWEEN

LYNETTE MARGARET
GILLOOLY
Applicant

A N D

THE PORT ROAD GALLERY
LIMITED
Respondent

Member of Authority: T G Tetitaha

Representatives: S Oldridge, Advocate for Applicant
C Scurr, Advocate for Respondent

Investigation Meeting: On the papers

Submissions Received: 2 May 2016 from Applicant
No submissions from Respondent

Date of Determination: 5 July 2016

DETERMINATION OF THE AUTHORITY

- A. Port Road Gallery Limited is ordered to pay Lynette Margaret Gillooly wage arrears comprising holiday pay pursuant to s.131 of the Employment Relations Act 2000 totalling \$1,946.16.**
- B. Port Road Gallery is to pay costs of \$1,821.56 to Lynette Margaret Gillooly.**

Employment relationship problem

[1] There is a single issue for determination - whether the applicant is owed holiday pay.

Relevant facts

[2] Lynette Margaret Gillooly was employed on a casual basis by The Port Road Gallery Limited as a gallery assistant in March 2011. She received an hourly rate of

\$18. Her last working day was 14 January 2014 because she went into hospital for a hip replacement.

[3] Although she later contacted the owner, Christina Scurr, to advise she was available for work none was offered. She was told that she would be used for “back up”.

[4] On 26 February 2015, Ms Gillooly resigned and requested her holiday pay be paid out. The respondent refused to make any payment. As a consequence, these proceedings were filed.

[5] The parties were directed to mediation where the matter was not resolved. It is now before me for determination.

Is the applicant owed holiday pay?

[6] Given Ms Gillooly was not offered further employment, I find her employment ended on or about her last day of work 14 January 2014. There is no evidence she took leave during her employment.

[7] Ms Gillooly has provided evidence of her earnings from Inland Revenue during the period she was employed by The Port Road Gallery Limited.

[8] Ms Gillooly, like all workers, was entitled to receive 4 weeks annual leave at the end of each 12 months of continuous employment¹. At the time the employment ended in January 2014, she was entitled to 8 weeks annual leave² plus 8% of her gross earnings for the period March 2013 to January 2014.³

[9] In respect of the 8 weeks annual leave her ordinary weekly pay⁴ is greater than her average weekly earnings⁵. Therefore Ms Gillooly’s ordinary weekly pay of \$200.25 is to be used to calculate her 8 weeks annual leave totalling \$1,602.

[10] For the period March 2013 to January 2014 before her next 12 month anniversary would have arisen, Ms Gillooly also earned \$4,302, 8% is \$344.16⁶.

¹ Section 16, Holidays Act 2003 (HA)

² Section 24 HA. Between March 2011 and March 2013 she would have been entitled to four weeks’ annual leave each year or eight weeks’ annual leave in total.

³ Section 25(2) HA.

⁴ Section 8(2)

⁵ Section 24(2) HA

[11] Accordingly, Port Road Gallery Limited is ordered to pay Lynette Margaret Gillooly wage arrears comprising holiday pay pursuant to s.131 of the Employment Relations Act 2000 totalling \$1,946.16.

Costs

[12] The applicant was successful and is entitled to costs. She seeks a contribution to her actual costs of \$2,501.25.

[13] Given this matter was dealt with on the papers the appropriate amount of time required to complete this matter would be equivalent to a half day hearing. The Authority has a daily notional tariff which is currently \$3,500. The starting point for costs is \$1,750.

[14] The applicant seeks recovery of the Authority filing fee of 71.50. This appears to be more than appropriate.

[15] Port Road Gallery is to pay costs of \$1,821.56 to Lynette Margaret Gillooly.

T G Tetitaha
Member of the Employment Relations Authority