

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 154
5368333

BETWEEN

PHILIP JAMES HURN
Applicant

AND

MYBIZ WEBSITES LIMITED
Respondent

Member of Authority: Dzintra King

Representatives: Applicant in Person
Dennis Heath, Advocate for Respondent

Hearing: 13 April 2012

Determination: 9 May 2012

DETERMINATION OF THE AUTHORITY

[1] The applicant, Mr Philip Hurn, says he is owed wages, holiday pay, payment of a notice period and commission payments. The respondent, MyBiz Websites Limited, denies that any monies apart from two weeks' pay are owed to the applicant.

[2] Mr Hurn started employment with the respondent on 4 September 2011. Mr Hurn says he ceased employment on 5 January 2012.

[3] Mr Hurn was not paid for the two pay weeks ending 10 and 17 November 2011. The amount due for each week is \$961.00 gross. For the week ending 24 November 2011 he was paid \$600 leaving a shortfall of \$361; and for the week ending 1 December 2011 he was paid \$400 leaving a shortfall of \$561. These sums total \$2,844.00 gross.

[4] The parties disagree regarding Mr Hurn's termination date. Mr Heath's view is that Mr Hurn did not work after 2 December 2011. I am satisfied that Mr Hurn worked until 5 January 2012. On 5 December 2011 Mr Hurn wrote to Mr Heath saying he had not been paid his full wages and that if his wages could not be paid in full he would be forced to give four weeks' notice. Mr Hurn is owed wages for the

five weeks he worked from 1 December 2011 to 5 January 2012. Those wages amount to \$4,805.00 gross.

[5] Also at issue is whether Mr Hurn is owed commission payments for websites he sold.

[6] Mr Heath maintained the employment agreement was entered into on the understanding that commission payments would only be made once Mr Hurn had sold sufficient to cover his wages. This is not what the signed employment agreement states. I am satisfied that Mr Hurn is owed \$700.00 in commission payments.

[7] Mr Hurn also seeks holiday pay. Mr Hurn is entitled to holiday pay at the rate at 8% of his gross earnings. His earnings during his employment were \$17,998.00. This includes the unpaid wages and the unpaid commission.

[8] Eight per cent of \$17,998.00 is \$1,439.84.

[9] The respondent is to pay the above sums to the applicant.

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

Dzintra King

Member of the Employment Relations Authority