

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2018] NZERA Auckland 229
3023306

BETWEEN

JASON HAYWARD
Applicant

AND

JOSEPH AUTRIDGE
First Respondent

AUTRIDGE BUILDING
CONTRACTORS LIMITED
Second Respondent

Member of Authority: Vicki Campbell

Representatives: Sandra Hayward for Applicant
Joseph Autridge for Respondents

Investigation Meeting: 19 July 2018

Oral Determination: 19 July 2018

Date of Record of Oral
Determination: 20 July 2018

RECORD OF ORAL DETERMINATION OF THE AUTHORITY

- A. Mr Hayward is owed arrears of wages for outstanding holiday pay and payment for public holidays not worked.**
- B. Autridge Building Contractors Limited is ordered to pay to Mr Hayward the following sums under s 131 of the Act within 14 days of the date of this determination:**
- a) \$1,567.45 gross for unpaid holiday pay; and**
 - b) \$675.00 gross for public holidays not worked.**

C. Autridge Building Contractors Limited is ordered to pay to Mr Hayward the sum of \$71.56 in costs within 14 days of the date of this determination.

Employment relationship problem

[1] Mr Jason Hayward was offered and accepted an apprenticeship with Autridge Building Contractors Limited (ABC) on 3 March 2016. This followed a short period of employment which started on 25 January. The apprenticeship was signed off by the Building and Construction Industry Training Organisation (BCITO) at the same time.

[2] Mr Hayward worked under the apprenticeship training agreement until October when he left his employment. At the end of his employment ABC failed to pay Mr Hayward his outstanding holiday pay. Mr Joseph Autridge is the managing director of ABC. He acknowledged the failure to pay the holiday pay for Mr Hayward but says he was exposed to costs of the apprenticeship and retained the holiday pay in compensation.

[3] When he lodged his statement of problem in the Authority Mr Hayward was not sure whether he was employed by Mr Autridge personally or his company ABC. At the investigation meeting Mr Hayward acknowledged he was employed by ABC. I am also satisfied that ABC was Mr Hayward's employer and so any orders made in this determination are made against ABC and not Mr Autridge personally.

[4] Mr Hayward has asked the Authority to order payment of his outstanding holiday pay plus payment for six public holidays taken during his employment and for which he says he was not paid.

[5] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has not recorded all the evidence received from Mr Hayward and Autridge Building Contractors but has stated findings of fact, expressed conclusions on issues necessary to dispose of the matter and specified orders made as a result.

Outstanding holiday pay

[6] Mr Hayward worked for ABC from 25 January until 7 October 2016. Under s 23 of the Holidays Act 2003 Mr Hayward was entitled to receive payment of holiday pay at the rate of 8% of his gross earnings for the period of his employment.

[7] Mr Hayward's gross earnings were \$19,593.13. 8% equates to a payment of \$1,567.45 gross.

[8] Mr Autridge told me he and Jason each agreed to pay half of the apprenticeship costs over the four years of the apprenticeship. Mr Hayward's holiday pay was withheld on that basis. The Holidays Act requires holiday pay to be paid when an employee's employment has come to an end.¹

[9] Autridge Building Contractors Limited is ordered to pay to Mr Hayward the sum of \$1,567.45 gross under s 131 of the Act for unpaid holiday pay within 14 days of the date of this determination.

Public Holidays

[10] Mr Hayward claims he was not paid for six public holidays taken during the period of his employment. Mr Hayward received the benefit of the holidays and was not required to work on the days. Mr Autridge told he paid Mr Hayward for each of the public holidays. Section 132 of the Act allows the Authority to accept as proved all claims made by an employee in respect of wages paid and hours, days and time worked by the employee. ABC has not provided me with wage and time records. I have received a summary of payments made to Mr Hayward but these records do not set out the days and hours worked by Mr Hayward.

[11] Mr Hayward says he was not paid for the following public holidays:

- 1 February – Auckland Anniversary Day
- 8 February – observation of Waitangi Day
- 25 and 28 March – Good Friday and Easter Monday
- 25 April – ANZAC Day
- 6 June – Queens Birthday holiday

¹ Holidays Act 2003, s 27.

[12] The record produced by ABC does not state what wages were paid to Mr Hayward for the weeks containing the public holidays on 1 and 8 February, and 25 and 28 March. The wages paid for the week 26 April was \$187.50 gross which is not indicative of Mr Hayward receiving payment for 25 April.

[13] The payment of wages made on 7 June was \$750.00 which equates to a payment of 50 hours work. I have concluded it is more likely than not that this payment included payment for the public holiday on 6 June.

[14] Under s 49 of the Holidays Act Mr Hayward was entitled to be paid not less than his relevant daily pay or average daily pay for each public holidays not worked. I have found on balance it is likely Mr Hayward did not receive payment for four public holidays.

[15] Relevant daily pay as defined in s 9 of the Holidays Act means the amount of pay Mr Hayward would have received had he worked on the day concerned. Average daily pay is an amount equal to the gross earnings for the period immediately prior to the holiday divided by the number of whole or part days during which Mr Hayward earned those gross earnings.

[16] I have not been provided with any records which would assist me in establishing the number of whole or part days Mr Hayward worked and therefore am unable to calculate the average daily pay. I have therefore calculated the outstanding public holiday on the basis of an average 9 hour day multiplied by Mr Hayward's hourly rate of \$15.00 per hour.

[17] Autridge Building Contractors Limited is ordered to pay to Mr Hayward the sum of \$675.00 gross under s 131 of the Act for unpaid holiday pay within 14 days of the date of this determination.

Costs

[18] Neither party was represented at the investigation meeting. It is appropriate that Mr Hayward be reimbursed the filing fee on his application. Autridge Building Contractors Limited is ordered to pay to Mr Hayward the sum of \$71.56 in costs within 14 days of the date of this determination.

Vicki Campbell
Member of the Employment Relations Authority