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Henderson v Bloxham t/a Social Cooking (Wellington) [2017] NZERA 2027 (24 April 2017); [2017] NZERA Wellington 27

Last Updated: 5 May 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

[2017] NZERA Wellington 27
3000245

BETWEEN SIOBHAN HENDERSON Applicant

AND GRAHAM BLOXHAM t/a SOCIAL COOKING Respondent

Member of Authority: Michele Ryan

Representatives: Applicant in person

Respondent in person Investigation Meeting: 20 April 2017 at Wellington Determination: 24 April 2017

WRITTEN RECORD OF AN ORAL DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Siobhan Henderson says Graham Bloxham trading as Social Cooking did not pay her final wages of \$1,192.50 (gross). She seeks to recover that sum.

[2] Mr Bloxham does not directly challenge Ms Henderson's claim, but says monies owed in wages have been withheld

because Ms Henderson did not perform aspects of her role that he had trusted her to undertake.

The issues

[3] The issue for the Authority to determine is whether Ms Henderson is owed wages.

[4] During the Authority's investigation meeting a preliminary matter was raised by Mr Bloxham. He says Ms Henderson was not employed by him personally but by a company of which he is a director.

[5] The issue as to the identity of Ms Henderson's employer needs also to be determined.

Who was Ms Henderson's employer?

[6] A signed employment agreement between an employee and an employing entity would usually provide a strong indication as to the identity of the employer. It is common ground however that Ms Henderson was not given a written employment agreement. In the absence of that documentation I have considered the oral testimony of the parties, the correspondence between them, and the documents furnished to the Authority.

[7] On balance I prefer Ms Henderson's evidence on this matter. She produced emails between herself and Mr Bloxham that were exchanged prior to commencing her employment and which, by implication, refer to the employer as "Social Cooking".¹ There is no other written documentation before the Authority which contradicts this evidence. I note also that Mr Bloxham did not dispute the identity of the employer at any time prior to the investigation meeting despite receipt of various documents from the Authority which named him personally as the respondent employer.

[8] I am satisfied that Mr Bloxham (trading as Social Cooking) was Ms Henderson's employer. Mr Bloxham accepts that Social Cooking is not an incorporated entity but is a name he uses to trade under.

Is Ms Henderson owed wages?

[9] The [Wages Protection Act 1983](#) does not allow for an employee's wages to be deducted by an employer except in accordance with the Act. [Section 4](#) provides that when wages become payable an employer is required to pay the entire amount without

deduction. There are limited exceptions to the provision, for example, at [s.5](#) wages

¹ Dated 17-19 June 2016

owed may be deducted if the employee has provided written consent permitting the employer to do so.²

[10] There is nothing in the [Wages Protection Act](#) that permits an employer to unilaterally deduct an employee's wages because it holds a view that the employee has not performed the role to expectations and there is no evidence that Ms Henderson provided written consent to allow Mr Bloxham to withhold final wages.

[11] Mr Bloxham has not established a lawful justification to withhold Ms Henderson's wages and is in breach of the [Wages Protection Act](#). Ms Henderson is entitled to be paid wages owed to her.

Orders and costs

[12] Pursuant to [s.4](#) of the [Wages Protection Act](#) Mr Graham Bloxham t/a Social Cooking is ordered to pay Ms Henderson the sum of **\$1,192.50** (gross) in outstanding wages. Mr Bloxham must also pay Ms Henderson **\$71.56**; the cost of the filing fee paid by Ms Henderson to progress her claim at the Authority.

Michele Ryan

Member of the Employment Relations Authority

[Section 6](#) of the [Wages Protection Act 1983](#) allows an employer to recover overpayments in certain circumstances, but those provisions are not relevant to this matter.

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