

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2013] NZERA Auckland 400
5415264**

BETWEEN SUSAN HILL
 Applicant

AND TEE THYME LIMITED
 Respondent

Member of Authority: Eleanor Robinson

Representatives: Applicant in person
 No appearance for Respondent

Investigation Meeting: 5 September 2013 at Auckland

Determination: 5 September 2013

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Ms Susan Hill, claims that she is owed the sum of \$937.10 as holiday pay entitlement by the Respondent, Tee Thyme Limited (Tee Thyme).

Failure of Respondent to attend or be represented

[2] Tee Thyme did not attend, and was not represented, at the Investigation Meeting despite having been served with the Notice of Investigation at the registered office of the company on Wednesday 28 August 2013 at 1.30 p.m.

[3] An Authority Support Officer contacted Mr Tim Higgins, Manager of Tee Thyme, by email on several dates to ascertain if Tee Thyme would be represented at the Investigation Meeting, however received no response.. I delayed the commencement of the meeting for some 15 minutes; however a representative for Tee Thyme did not arrive.

[4] For the reasons set out above I am satisfied that Tee Thyme had notice of the application and the date of the Investigation Meeting. Tee Thyme has not shown good cause for its failure to attend or to be represented.

[5] I have therefore proceeded pursuant to clause 12 Schedule 2 of the Employment Relations Act 2000 to act as fully as if Tee Thyme had attended or been represented.

Determination

[6] Ms Hill had been employed at as a café assistant by Tee Thyme until 24 July 2011 when her employment terminated.

[7] During the period of her employment, Ms Hill said she had not received payslips, nor had she been issued with an employment agreement.

[8] Ms Hill said she had received a text message from Mr Higgins on 5 August 2011 which stated: *“Hello sue who total holiday pay \$1874.19 have put half in tonight couldn’t manage all sorry. Wil let u have when rest goes in next week. Hope u r well, look fwrd to cing u”*

[9] Ms Hill said she had received \$937.09 of the outstanding holiday pay entitlement on 5 August 2011; however the promised second payment had not been made.

Determination

[10] I am satisfied from the documentation filed with the Authority that Ms Hill is owed holiday pay entitlement and determine that she is entitled to the sum of \$937.10 in respect thereof.

Remedies

[11] Tee Thyme is ordered to pay the sum of \$937.10 gross to Ms Hill in respect of outstanding holiday pay entitlement.

Interest

[12] Ms Hill has applied for interest on the outstanding holiday pay entitlement.

[13] The Authority has the power to award interest pursuant to clause 11 of the Second Schedule of the Act at the rate prescribed by the Judicature Act 1908, which is currently 5% per annum¹.

¹ Judicature (Prescribed Rate of Interest) Order 2011 (SR2011/177)

[14] I consider that it is appropriate that Tee Thyme is ordered to pay interest on the outstanding sum owed to the Applicants.

[15] Tee Thyme is to pay interest of 5% on the outstanding sums due to Ms Hill.

[16] Ms Hill is to be reimbursed the filing fee of \$71.56.

Costs

[17] While costs are reserved, I note here that, subject to her submissions, Ms Hill was not legally represented and, unless she incurred legal costs, it is therefore unlikely she has grounds to claim a contribution to any fair and reasonable costs.

Eleanor Robinson
Member of the Employment Relations Authority