

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 391/09  
5275615

BETWEEN                      WENDELL HYNES  
   Applicant  
  
AND                                FIRE STARTER LIMITED  
   Respondent

Member of Authority:        R A Monaghan  
  
Representatives:              W Hynes in person  
   B Anich, advocate for respondent  
  
Investigation Meeting:        5 November 2009  
  
Determination:                5 November 2009

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Wendell Hynes says his former employer, Fire Starter Limited, owes him unpaid salary and holiday pay.

[2] Bogdan Anich is the director and shareholder in Fire Starter Limited. He accepted that the company owed Mr Hynes unpaid salary and holiday pay.

[3] Mr Anich also sought to comment on the company's financial circumstances, including on possible future sources of income. However even if the information is correct, it does not affect the company's obligations under the employment agreement. Further, the Authority was not asked to consider ordering repayments according to a schedule, and Mr Hynes was not prepared to agree to a schedule. The matter has been to mediation, but the parties were not able to resolve it.

**Determination**

[4] In October 2008 the parties signed a written employment agreement under which Fire Starter Limited employed Mr Hynes as commercial relationship manager. Clause 6.1 of the agreement provided that Mr Hynes would receive a salary of \$250,000 per annum, payable monthly on the 20<sup>th</sup> of the month. Clause 7.1 of the agreement provided that Mr Hynes would be entitled to 6 weeks' annual leave for each 12 months of service.

[5] With minor exceptions to which I will return Mr Hynes did not receive salary payments, and by letter dated 15 April 2009 he gave one month's notice of his resignation. He did not receive any further payments, and did not receive holiday pay owed at the date of termination of employment. Accordingly he seeks payment quantified as follows:

- a. unpaid salary calculated as \$20,833.33 (gross) per month commencing on 20 November 2008 and ending 20 April 2009, being -  
 $6 \times \$20,833.33 = \$125,000$
- b. unpaid salary from 21 April 2009 to 15 May 2009, being -  
 $3 \text{ weeks} \times \$4,807.70 = \$14,432.10$  (gross)
- c. unpaid holiday pay in the equivalent of 3 weeks' salary, being -  
 $\$14,432.10$  (gross)

[6] The total of the above figures is \$153,864.20 (gross).

[7] Mr Hynes received payments of \$4,000 (nett) in December 2008 and \$2,300 (nett) in February 2009. I observe that the sum of those figures is close to the nett equivalent of two weeks' salary and adjust the sum to a corresponding gross amount accordingly. Leave is reserved to seek an amendment to the resulting figure if either party disagrees.

[8] Mr Hynes further accepted that he owed the company \$13,000 under an invoice and agreed that it be deducted from the order in respect of outstanding wages and holiday pay.

**Order for payment**

[9] Fire Starter Limited is therefore ordered to pay to Mr Hynes an amount calculated as:

$$\$153,864.20 \text{ (gross)} - \$9,615.38 \text{ (gross)} = \$144,248.82 \text{ (gross)}$$

[10] The sum of \$13,000 is to be deducted from the nett amount remitted to Mr Hynes.

[11] Interest is payable under clause 11 of the Second Schedule to the Employment Relations Act 2000, calculated at the rate of 4.8% from 15 May 2009 to the date of payment.

**Costs**

[12] Fire Starter Limited is further ordered to reimburse Mr Hynes for the filing fee of \$70.

R A Monaghan

Member of the Employment Relations Authority