

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Jared Lee Johnstone (Applicant)  
**AND** Morrison Bar Limited (Respondent)  
**REPRESENTATIVES** Blair Edwards for applicant  
No appearance for respondent  
**MEMBER OF AUTHORITY** Janet Scott  
**INVESTIGATION MEETING** 8 September 2005  
**DATE OF DETERMINATION** 14 September 2005

**DETERMINATION OF THE AUTHORITY**

**Employment Relationship Problem**

Mr Johnstone brings a claim for arrears of wages and holiday pay including payment for days in lieu of statutory holidays worked by him.

He also seeks to recover work related expenses incurred by him and asks to be reimbursed for bank penalties incurred by him as a result of automatic payments being declined because wages were not received by him on due dates.

There was no appearance at the investigation meeting by or on behalf of the respondent. I am satisfied the respondent has been served with the Statement of Problem and Notice of Investigation Meeting.

The meeting was delayed to allow for the situation that the respondent had been unavoidably detained. However, as there was neither an appearance for nor contact from the respondent to explain its absence, I have proceeded to hear and determine the matter in accordance with Clause 12 of the Second Schedule of the Employment Relations Act 2000.

**Background**

Mr Johnstone was formerly the General Manager of a bar/night club called Morrison. His employment with the above named respondent commenced on 1 June 2004. Prior to this he had been General Manager of the Club under the ownership of Denim Holdings Ltd. He is a minor shareholder in this company. When the majority shareholders decided to sell the Club to Mr Ng (Sole Director of Morrison Bar Ltd), Mr Johnstone was offered ongoing employment with the new owner. There was a verbal agreement between the parties that his previous terms and conditions

- contained in a written employment agreement - would continue. It was also verbally agreed that the employer would reimburse him for authorised expenditure made on behalf of the business. He was also promised resources to relieve him of the excessive workload he was under – particularly relating to staffing and financial issues.

Mr Johnstone obtained a cell phone for work related use.

Unfortunately the promise made by the new owner to bring increased working capital to the business did not eventuate and in fact Mr Jared's workload increased. As time went on contractors and suppliers refused to supply services and products to the business because their accounts had not been paid. Mr Johnstone was left to manage these situations and this led to him undertaking the cleaning of the premises and personally collecting and paying for necessary supplies. Mr Johnstone was frequently not paid on time and started incurring penalties from his bank when automatic payments (timed to be paid after his salary was deposited) were not paid. His evidence was that he had frequently foregone his own wages in order to pay the staff, suppliers and contractors necessary to keep the business trading.

The situation became increasingly intolerable for Mr Johnstone and he resigned on 19 March 2005 to take effect from 28 March. He has also brought a personal grievance against his former employer. (AEA 709/05).

## **Claims**

Mr Johnstone submits he was not paid for the last three weeks of his employment. His remuneration was \$60,000 per annum and he submits wages owed amount to \$3,461.54 gross.

Mr Johnstone submits he has not received holiday pay owed to him. He submits he is entitled to 6% of his total earnings for the period 1 June 2004 – 28 March 2005.

Mr Johnstone submits he worked on three statutory holidays and is entitled to payment for a lieu day for those days (\$692.31 gross).

Mr Johnstone gave evidence he obtained and used his cell phone solely for business purposes. He submitted his cell phone accounts and submits he has not been reimbursed for the sum of \$3,243.55.

Mr Johnstone submitted he provided and paid for glassware used at the bar. His has not been reimbursed for the cost of this glassware. The sum owed to him is \$1,327.47.

Mr Johnstone gave evidence and submitted documentation to demonstrate that he incurred bank penalties as a result of insufficient funds being available to meet his automatic payments. The reason there were insufficient funds in his account was that salary payments due were not paid into his account on the due date. He asks to be reimbursed for the penalties incurred by him due to the late payment of his salary. The sum sought is \$1,687.50.

## Discussion

Mr Johnstone presented as a most credible witness. His oral evidence was supported (where possible) by relevant documentation including his personal tax summary provided by IRD.

I am satisfied that Mr Johnstone is entitled to arrears of wages and annual holiday as claimed.

I am also satisfied there was an oral agreement between Mr Ng and Mr Johnstone at the time Mr Johnstone's employment commenced with Morrisson Bar Ltd that he would be reimbursed for employment related expenses and that the claims he has made under this head should be ordered.

Mr Johnstone's nominal day off was Monday. He would try to finish up by early afternoon on Sundays and not return to work until Tuesday afternoon. However, Mr Johnstone claims he frequently worked a 7-day week for Morrisson Bar Ltd. It was submitted too that Morrisson's licence permitted it to trade every day of the year and that Mr Johnstone worked statutory holidays on days where normal businesses would not be trading. Mr Johnstone submits he is entitled to payment for working on three statutory days that fell in the period of his employment with Morrison Bar Ltd. There are no wage and time records available to support Mr Johnstone's claim for payment for lieu days for work undertaken on statutory holidays but his claim for three lieu days is reasonable<sup>1</sup> given the evidence (which I accept) that he frequently worked a 7-day week.

## Determination

The respondent is directed to pay to Mr Johnstone arrears of wages owing in the sum of \$3,461.54 gross. (3 weeks @ \$60,000 per annum). Mr Johnstone is entitled to 6% of this sum as holiday pay (being \$207.69 gross see below).

The respondent is directed to pay to Mr Johnstone holiday pay owed to him. I have calculated holiday pay by reference to the total earnings received by Mr Johnstone in his employment with Morrisson Bar Ltd for the period 1 June 2004 –31 March 2005 (IRD Personal Tax Summary \$48,534). Six percent of this sum is \$2,912.04 gross. To this I have added \$207.69 gross being holiday pay owing in respect of the arrears of wages ordered above. The respondent is directed to pay to Mr Johnstone the sum of \$3,119.73 gross as arrears of holiday pay owed to him.

The respondent is directed to pay the applicant three days pay for days in lieu of statutory holidays worked by him, \$692.31 gross.

The respondent is directed to pay to the applicant monies owed being reimbursement of business related expenses incurred by him in running the business. The sums to be paid to the applicant are \$3,234.55 net to reimburse him for cell phone expenses and \$1,327.47 net for glasses obtained and paid for by him for use by the business.

I make no award to the applicant in respect of the bank penalties incurred by him but will consider this claim in the context of the personal grievance claim.

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<sup>1</sup> There were 10 statutory holidays which fell during his employment with Morrisson Bar Ltd

## Summary of Orders

The respondent is directed to pay to the applicant the following sums as arrears of wages and holiday pay owed.

	\$
Arrears of Wages	3,461.54 gross
Holiday Pay (6% of total earnings)	3,119.73 gross
Statutory lieu days (3 days)	692.31 gross
	_____
<b>Total</b>	<b>7, 273.58 gross</b>

*In addition* to the above gross sum the respondent is also directed to pay to the applicant the following net sums to reimburse him for business related expenses.

	\$
Telephones expenses	3,243.55 net
Glasses	1,327.47 net
	_____
<b>Total</b>	<b>4,571.02 net</b>

## Costs

Costs are reserved. The parties are directed to file and serve submissions on the subject and the matter will be determined.

Janet Scott  
Member of Employment Relations Authority