

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 27/10
5156111

BETWEEN LISA MARIE KINGDOM
Applicant

AND ISIA HOLDINGS LTD
Respondent

Member of Authority: James Wilson

Representatives: Lisa Kingdom in person
 Angelic Murray, Director, for Isia Holdings

Determination: 25 January 2010

SUPPLEMENTARY DETERMINATION OF THE AUTHORITY

The substantive Determination

[1] In a determination dated 23 November 2009 I found:

*[12] I accept that Isia genuinely believed that they were able to reduce Ms Kingdom's hours without her agreement. They were mistaken. Ms Kingdom is entitled to receive payment for the hours she would have worked had her hours not been reduced. Ms Kingdom has calculated this amount as \$8148 plus 8% holiday pay (\$887) on that amount.. This figure has not been directly disputed by Isia but I accept that they may wish to undertake their own calculation as to its accuracy. **Isia Holdings is to pay Ms Kingdom \$9035 less tax, or such other figure as is agreed between the parties, being the difference in wages actually paid to Ms Kingdom and the hours she would have worked had her hours not been reduced. If the parties are unable to agree on the amount owing they may refer that matter back to me for final determination.***

[2] Unfortunately the parties have not been able to agree on the correct amount to be paid to Ms Kingdom and it now falls to me to determine the amount owing

[3] I have reviewed the handwritten timesheets supplied by Ms Kingdom and the transcribed versions used by Isia Holdings in their calculations. The two sets of documents are identical and it seems that the difference in the respective calculations relates to payment for a number of Mondays. Ms Kingdom's employment agreement provided that she would work for *minimum of 35 hours a week ... and working 40 hours a week from Monday to Saturday each week*. The employment agreement also provided that Ms Kingdom would work five hours on Mondays as part of a fortnightly roster during which she would also be required to work for eight hours every second Saturday. This roster amounted to an average of approximately 35 hours per week. The agreement provided that Ms Kingdom's hours could be changed *following consultation in good faith*. Relying on this provision Isia reduced Ms Kingdom's hours over a period of time including removing her Monday shift.

[4] Isia Holdings say that the appropriate method of calculation is to pay Ms Kingdom for a minimum of 35 hours per week (i.e. the minimum provided by her employment agreement) for each week of her employment. In calculating the outstanding amount they have compared the actual hours paid to the minimum 35 hours. Where the amount paid was less than 35 they have provided for payment of the shortfall. When the amount paid was more than 35 they have made no corresponding off-set. Using this method Isia has calculated the shortfall owing to Ms Kingdom as \$6134.94 (270.5 hours at \$21 per hour plus holiday pay at 8%)

[5] Ms Kingdom on the other hand has calculated the amount owing as \$9035 (388 hours at \$21 per hour plus holiday pay at 8%.) Her calculation takes into account all of the Mondays that she was not required to work irrespective of whether or not she was paid the minimum 35 hours required by her employment agreement in a particular week.

Determination

[6] Taking into account the wording of Ms Kingdoms employment agreement and all of the other circumstances surrounding how her hours of work came to be reduced, I find that the correct method of calculation is that used by Isia Holdings. The calculation ensures that although Ms Kingdom's hours were changed she will not be financially disadvantaged when compared to the wages she would have earned had the changes not be made. **Isia Holdings is therefore ordered to pay Ms Kingdom the gross sum of \$6134.94 in unpaid wages and holiday pay**

Method of payment

[7] Isia Holdings have requested that they be allowed to pay Ms Kingdom the amount owing by way of instalments. They say that they have had a financially challenging time over the past year to 18 months and to pay Ms Kingdom in full immediately would be extremely difficult and may force the company into receivership. Ms Kingdom has requested that I require Isia to pay her what she is owed immediately as she too has experienced financial hardship.

[8] The outstanding amounts are owed to Ms Kingdom on and from the date of this determination. Should Isia not pay the outstanding amount within a reasonable time Ms Kingdom will be entitled to enforce this determination either by way of compliance order or through the District Court. However I would encourage Ms Kingdom to consider negotiating an appropriate payment regime with Isia rather than insisting on immediate payment and thereby running the risk that Isia may be placed in receivership and being unable to pay all or any of the amounts owing. In this regard the parties may wish consider using the services of a Department of Labour mediator to help them to reach a satisfactory agreement.

James Wilson

Member of the Employment Relations Authority