

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2018] NZERA Wellington 48
3025331

BETWEEN JULIE LENNON
Applicant

AND PHOENIX PUBLISHING
LIMITED
Respondent

Member of Authority: Trish MacKinnon
Representatives: Graeme Ogilvie, Advocate for Applicant
No appearance for Respondent
Investigation Meeting: 28 May 2018 at Wellington
Submissions Received: On the day from the Applicant
Determination: 29 May 2018

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Julie Lennon claims unpaid wages and holiday pay from Phoenix Publishing Limited (Phoenix Publishing).

[2] Phoenix Publishing has failed to file a statement in reply or respond to the Authority's notice of investigation meeting. In the absence of any contact telephone numbers for the respondent the Authority was unable to convene a telephone conference.

[3] A notice of investigation meeting was sent to the respondent at its registered address on 10 April 2018 notifying 2 May 2018 as the date for an Authority

investigation meeting to hear Ms Lennon's claims. No response was received from the respondent.

[4] The investigation meeting scheduled for that date did not proceed when it was ascertained from a new search of the Companies Office Register that the respondent's address for service had been changed with effect from 16 March 2018. This was after the statement of problem had been served on the respondent at its then address for service but before the notice of investigation meeting had been served. Accordingly, I was not satisfied the respondent had been properly served that notice.

[5] A new notice of investigation meeting was served on the respondent at its current address for service on 3 May 2018. Service was effected by courier and verified through Courier Post's Track and Trace. The notice informed the respondent that the investigation meeting would take place on Monday 28 May 2018 in Wellington. No response has been received from the respondent.

[6] I am satisfied that notice of the proceedings has been properly served on the respondent and that it has had full opportunity to participate in the proceedings but has chosen not to do so. Therefore, and in accordance with clause 12 of Schedule 2 of the Employment Relations Act 2000 (the Act), I proceeded with the investigation meeting in the respondent's absence.

Evidence

[7] Ms Lennon says she commenced her employment with Phoenix Publishing on 21 August 2017. She was employed as a sales manager with an annual base salary of \$50,000. Her employment agreement provided that she would be paid monthly in arrears.

[8] On 28 September 2017 Ms Lennon says her employer advised it would be giving her notice of termination. Her employment agreement included a trial period provision of 90 days commencing on her first day of employment. Under the provision, either the employer or employee could end the employment by giving five days' notice before the trial period ended.

[9] Ms Lennon says that after receiving this advice, and because she was at that stage having serious doubts about the position, she resigned giving five days' notice

which she intended to work. Phoenix Publishing did not require her to work out her notice period and informed her it would pay her the five days' notice.

[10] Ms Lennon continued to work until and including Friday 29 September 2017. During that time, at her employer's request, she couriered Phoenix Publishing equipment to the company's sole director, Bronwyn Rawson, in Auckland. Her employer undertook to reimburse her for the \$24 courier charge she paid personally.

[11] During her employment Ms Lennon received pay for one month which, according to the payslip she provided to the Authority, was for the period 23 August 2017 to 22 September 2017. This was despite her employment having commenced on 21 August 2017. Ms Lennon says that is the only payment she has received from her employer. She has provided bank account records that confirm a salary payment of \$3,315.45 was deposited into her bank account by Phoenix Publishing on 28 September 2017. The bank records, which are for the period from 25 September to 31 October 2017, show no other payment from the employer in that period.

[12] Ms Lennon's evidence, which I accept, is that she provided only one bank account number to her employer.

Monies claimed

[13] Ms Lennon claims payment of 11 days' unpaid wages. These are for the two days, 21 and 22 August 2017, that were not included in the one pay she received during her employment; the 5 days she worked from 25 to 29 September 2017; and the 4 day remainder of her notice period.

[14] Additionally she claims holiday pay on all remuneration both paid, and owing, to her. She seeks the reimbursement of \$125 deducted from her pay, purportedly for KiwiSaver, and the reimbursement of the \$24 courier charge she paid for the return of equipment to her employer.

[15] Ms Lennon also seeks interest and reimbursement of costs incurred in pursuing her claim in the Authority.

[16] Since the termination of her employment she has sought, unsuccessfully, to recover the amounts owed to her. I find this unsurprising given the lack of response the Authority has received from Phoenix Publishing in this matter.

Determination

[17] I accept Ms Lennon's claim for unpaid wages of 11 days, and for holiday pay covering the period of her employment. I also accept evidence provided by Ms Lennon that the \$125 deducted from the pay she received on 28 September 2017 was not paid to her KiwiSaver account. She had completed no forms authorising her employer to make deductions from her remuneration for that purpose and there is no evidence that money was ever paid to her KiwiSaver account.

[18] Ms Lennon provided evidence of her IRD records that she has accessed online. These show her employer had purported to pay her, in October 2017, the sum of \$1,357 less tax of \$177.45. Ms Lennon's evidence is that she has never received this money, which is shown on the IRD record as earnings and deductions from Phoenix Publishing.

[19] As noted above, Ms Lennon's bank records confirm only one payment was made by her employer between 25 September and 31 October 2017. That was the payment made on 28 September for the period from 23 August to 22 September 2017. I accept Ms Lennon's evidence that this was the only remuneration she received from Phoenix Publishing, both during and after her employment.

[20] I also accept Ms Lennon's claim for reimbursement of the courier charge she incurred and for interest on all sums owing to her from the date those sums became due.

Orders

[21] Phoenix Publishing Limited is ordered to pay the following sums to Ms Lennon:

- a. \$2,115.41 gross, being remuneration for 11 days' unpaid wages;
- b. \$169.23 gross, being holiday pay at 8% on those wages;
- c. \$333.33 gross, being holiday pay at 8% on wages paid for the period 23 August to 22 September;
- d. \$125.00 gross, being the amount deducted from Ms Lennon's pay of 28 September 2017;

- e. \$24.00 nett, being reimbursement of courier expenses incurred at the request of the employer;
- f. Interest at 5% on the amounts at (a) to (e), calculated from 29 September 2017 to the date of payment.¹

[22] These amounts are to be paid to Ms Lennon within 28 days of the date of this determination.

Costs

[23] Ms Lennon has incurred advocacy costs in bringing this application to the Authority. She seeks a contribution to her costs as well as the reimbursement of the filing fee.

[24] I find her request to be reasonable and further order Phoenix Publishing to pay Ms Lennon the sum of \$1,125² and to reimburse her the Authority filing fee of \$71.56.

[25] These sums are also to be paid within 28 days of the date of this determination.

Trish MacKinnon
Member of the Employment Relations Authority

¹ In accordance with clause 11 of Schedule 2 of the Act

² Based on one quarter of the Authority's nominal daily tariff of \$4,500