



New Zealand Employment Relations Authority Decisions

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Lutz v Swiss on Beach Limited (Christchurch) [2017] NZERA 1038 (20 March 2017); [2017] NZERA Christchurch 38

Last Updated: 1 April 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

[2017] NZERA Christchurch 38
3000048

BETWEEN ADRIAN LUTZ Applicant

A N D SWISS ON BEACH LIMITED Respondent

Member of Authority: David Appleton

Representatives: Applicant in person

No participation from Respondent

Investigation Meeting: Determined on the papers

Submissions Received: Information received from Applicant on 17 February and

13 March 2017

Date of Determination: 20 March 2017

DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY

Employment relationship problem

[1] Mr Lutz seeks an order of 4 weeks 3 days' pay, being the balance of notice owed to him under his employment agreement. He also seeks 8% holiday pay and an award of the Authority's lodgement fee.

[2] The respondent has not taken any part in the proceedings, failing to lodge a statement in reply and failing to engage with the Authority in any way.

Background

[3] The respondent operated a Mövenpick outlet in Queenstown. Mr Lutz was employed as a "parlour manager" under the terms of an individual employment

agreement signed by Mr Lutz on 3 December 2015 and signed on behalf of the respondent by its director, El-Fadil Kardaman.

[4] Under the terms of the employment agreement, Mr Lutz was entitled to \$14.75 per hour and the period required for notice of termination was stated to be eight weeks.

[5] Mr Lutz provided evidence to the Authority that he was told on 12 May 2016 by text that the last day of trading was going to be 2 June 2016. Mr Lutz asserts that he was only given 3 weeks 2 days' notice of the termination of his employment and that the respondent has breached the terms of the individual employment agreement by failing to pay him the balance of notice due.

[6] At the time of termination of employment, the minimum wage had increased to \$15.25 per hour.

[7] Mr Lutz provided a copy of his payslips and bank statements for the last few weeks of his employment. His last payslip states that it was for the pay period ended

5 June 2016. This showed payment in respect of alternative holidays worked and holiday pay. It does not show any payment for outstanding notice pay. The final pay for hours worked appears to have been made in respect of the preceding week, namely, for the pay period ended 29 May 2016 which shows that Mr Lutz worked

3.5 hours.

[8] Having perused these payslips and the bank account statements, I am satisfied that Mr Lutz was not paid in respect of the balance of notice due to him, namely

4 weeks and 3 days' pay.

Determination

[9] I am satisfied on the balance of probabilities that the respondent has breached Mr Lutz's employment agreement by failing to give him eight weeks' notice of termination of employment. He is therefore entitled to be paid in respect of the balance of the notice due, namely, for 4 weeks and 3 days' pay. I calculate this sum as being the gross sum of \$2,911.23.

[10] Mr Lutz is also entitled to receive final holiday pay in respect of this sum, pursuant to [s.25](#) of the [Holidays Act 2003](#). This amounts to the gross sum of \$232.90 in respect of the arrears of pay due.

[11] Finally, having been successful in his application, Mr Lutz is entitled to be reimbursed the sum of \$71.56, being the lodgement fee he has incurred in order to pursue his entitlements.

Order

[12] I order that the respondent pay to Mr Lutz the following sums: (a) \$2,911.23 gross;

(b) \$232.90 gross; and

(c) \$71.56.

Costs

[13] Mr Lutz was not represented in pursuing his claim before the Authority and so has incurred no further costs other than the lodgement fee. I therefore make no further order as to costs.

David Appleton

Member of the Employment Relations Authority

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