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McCallum v Phoenix Publishing Limited (Auckland) [2017] NZERA 171; [2017] NZERA Auckland 171 (13 June 2017)

Last Updated: 23 June 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2017] NZERA Auckland 171
3007791

BETWEEN LILY McCALLUM Applicant

AND PHOENIX PUBLISHING LIMITED

Respondent

Member of Authority: Eleanor Robinson

Representatives: Applicant in Person

Bronwyn Rawson, representing the Respondent

Investigation Meeting: 13 June 2017 at Auckland

Oral Determination Delivered:

Date of Written Determination:

13 June 2017

13 June 2017

ORAL DETERMINATION OF THE AUTHORITY

This determination is a written record of an oral determination delivered on 13 June 2017.

Employment Relationship Problem

[1] Ms Lily McCallum, the Applicant, is claiming unpaid wages, unpaid holiday pay entitlement and unpaid expenses from the Respondent, Phoenix Publishing Limited (Phoenix Publishing).

[2] Phoenix Publishing has failed to file a Statement in Reply despite having been requested to do so at a telephone conference call held on 2 June 2017.

Issues

[3] The issue for determination is whether or not Ms McCallum is owed the monies as claimed by Phoenix Publishing.

Note

[4] Phoenix Publishing failed to follow directions of the Authority. No Statement in Reply was failed despite the request to Ms Bronwyn Rawson, sole director and major shareholder of Phoenix Publishing. Nor did Phoenix Publishing file witness statements as requested.

[5] The Investigation Meeting was set down to be held on 13 June 2017 as agreed with the parties in a case management conference on 2 June 2017.

[6] The date was confirmed to the parties by means of a Notice of Investigation Meeting dated 2 June 2017.

[7] Ms Rawson did not attend the Investigation Meeting in person and an Authority Officer who was initially unable to contact Ms Rawson by telephone on the day of the meeting, was advised by her assistant approximately 50 minutes after the investigation meeting had commenced that Ms Rawson had mistakenly believed the meeting to have been scheduled for tomorrow, 14 June 2017.

[8] I was unable to accept this explanation. Ms Rawson attended the case management conference on 2 June 2017 and agreed to the date of the Investigation Meeting being 13 June

2017, and was provided with the Notice of Investigation setting out clearly the date and time of the Investigation Meeting.

[9] I was satisfied that no good cause had been shown for Ms Rawson's failure to attend and I consequently proceeded with the Investigation Meeting pursuant to clause 12 of Schedule 2 of the Employment Relations Act 2017.

Facts

[10] Ms McCallum was employed as an Advertising Territory Manager by Phoenix Publishing on 27 February 2017.

[11] Ms McCallum was provided with an individual employment agreement (the Employment Agreement) which contained the following terms: Remuneration: \$40,000.00 p.a.
Hours of work: 8.30 a.m. to 5.00 p.m.
Notice period: 4 weeks in writing

[12] Expenses were covered in Appendix B to the Employment Agreement:

Fuel \$0.72 per Kms as advised by INR, paid monthly, travel log supplied to reflect call log.

Phone Supplied with appropriate plan to use for business & limited personal use – returned with all history and contacts pertaining to Phoenix Publishing Ltd on termination of employment.

Laptop Supplied – returned with all data and emails pertaining to Phoenix Publishing Ltd on termination of employment.

[13] Ms McCallum said that she was not provided with a phone or a laptop by Phoenix Publishing.

[14] Ms McCallum resigned her employment in writing on 17 March 2017 providing the 4 week contractual notice period which she fully intended to work. However Ms McCallum said she was 'stood down' by Ms Rawson immediately following her resignation.

[15] Ms McCallum received no payment in lieu of respect of the notice period pursuant to clause 14.4 of the Employment Agreement, her final salary payment or a payment of expenses properly incurred in the carrying out of her duties.

Determination

[16] Ms McCallum has filed submissions and receipts and other evidence in support of her claim. No documentation has been received from Phoenix Publishing.

Final Payment

[17] Ms McCallum was not paid for the last period she worked for Phoenix Publishing. Her final pay was set out on the pay advice provided to her by Phoenix Publishing in the sum of \$2,307.69.

[18] **I order Phoenix Publishing to pay Ms McCallum the sum of \$2,307.69 gross in respect of the unpaid notice period.**

Holiday pay

[19] Ms McCallum said she received no holiday pay entitlement during her period of employment with Phoenix Publishing.

[20] **I order Phoenix Publishing to pay Ms McCallum the sum of \$184.62 gross**

(calculated as \$2,307.69 x 8%) pursuant to [s 23](#) of the [Holidays Act 2003](#).

Notice Period

[21] Ms McCallum was not required to work her contractual notice period of one month.

[22] **I order Phoenix Publishing to pay Ms McCallum the sum of \$3,333.33 gross in respect of the unpaid notice period.**

Expenses

[23] The Employment Agreement provides that payment will be made in respect of petrol expenses upon receipt of a travel log. Ms Mc Callum provided her travel log to the Authority, in addition to receipts for petrol and parking expenses.

[24] Ms McCallum had also incurred agreed expenses in relation to stationary purchases.

[25] Ms Tania Ireland, Assistant to Ms Rawson, confirmed to Ms McCallum in an email exchange that her expenses claim had been approved by Ms Rawson in the sum of \$399.15.

[26] **I order that Phoenix Publishing pay Ms McCallum the sum of \$399.15 in respect of unpaid expenses.**

Costs

[27] While costs are reserved, I note here that, subject to her submissions, Ms McCallum represented herself and, unless she incurred legal costs, it is therefore unlikely she has grounds to claim a contribution to any fair and reasonable costs.

[28] **Ms McCallum is to be reimbursed the filing fee of \$71.56.**

[29] The amounts set out above for payment to Ms McCallum by Phoenix Publishing are payable within 28 days of the date of this determination.

Eleanor Robinson

Member of the Employment Relations Authority

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