

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA23A/10
5075939

BETWEEN ANNE MAREE McCOMBIE
Applicant
A N D PAPWORTH ASSET
MANAGEMENT LIMITED
Respondent

Member of Authority: Paul Montgomery
Representatives: Grant Devlin, Advocate for Applicant
Rachel Brazil, Counsel for Respondent
Determination: 13 April 2010

SUPPLEMENTARY DETERMINATION OF THE AUTHORITY

[1] In determining the substantive matters between the parties the Authority directed the parties' representatives *to confer to establish the correct total paid to Mrs McCombie prior to the issue of this determination and to deduct that money from the total award made and then calculate the remaining balance outstanding. The interest rate to be applied to that balance is 4.65%.*

[2] Both representatives have provided their calculations as they are unable to agree.

[3] Following clarification with Mr Devlin, it is apparent his calculations of interest due are based on the gross sums, not those net of tax.

[4] For the avoidance of doubt, the commencement date set out in the substantive determination, namely 15 December 1999, stands.

[5] The payment made by the respondent to the applicant on 19 September 2005 comprised an element of interest, namely \$385.00. That interest, from the evidence, related to wage and leave payments made to the applicant at the same time. That interest and the payments made are to be deducted from the Authority's award to Mrs

McCombie (see para.[53] of the original determination). Once that deduction is made, and tax has been calculated on the sums owing, that is the point at which the interest at 4.65% is to be calculated and paid to the applicant.

[6] The calculations as set out above are to be copied to the applicant at the time the interest is paid to her.

One final matter

[7] Mrs McCombie has advised she now wishes to pursue a personal grievance.

[8] Her original statement of problem received by the Authority had a typed document attached. The written Form 1 document makes no reference to a personal grievance claim. In the attached document, para.1, Mrs McCombie writes:

*I also seek reparation for humiliation, stress and anxiety caused by Mr Papworth's threats and intimidation **since** my resignation back on Christmas Day 2003.*

[9] At the close of the interview with Mrs McCombie with Mr Devlin, who represented her also present, on 22 September 2009, I advised her and her representative that if she believed she had a personal grievance against the respondent it was necessary to apply for leave to bring it outside the 90 day period. To date, the Authority has not received that application.

[10] In a letter dated 7 April 2006 Mr Papworth, on behalf of the respondent, replied to correspondence from the applicant in which she had alleged a personal grievance, stated:

780 days have passed since you resigned from your employment with Papworth Asset Management Limited and Papworth Asset Management Limited definitely does not agree with or accept your claim for a personal grievance as it is being raised well out of the time limits set down in the Employment Relations Act 2000.

[11] It was in the light of this correspondence that the Authority advised Mrs McCombie at the close of the interview that in order to progress any grievance claim she believed she had, needed to begin with an application for leave to lodge a personal grievance out of time.

[12] The Authority did **not** indicate it would come back to it at a later date. It simply advised the applicant of the process which needed to be followed, including the need to serve any application for leave on the respondent, and there the matter rests.

[13] Any application needs to be considered in the light of the statutory bar set out in s114(6) of the Act which states that no action in relation to a personal grievance may be commenced more than 3 years after the date on which the personal grievance was raised.

Paul Montgomery
Member of the Employment Relations Authority