

No appearance by Ms Pio

[2] Ms Pio did not file a Statement in Reply and she has had no contact with the Authority. Ms Pio did not attend mediation as directed by the Authority. Ms Pio was served with the Statement of Problem and Notice of Hearing but did not attend the Authority's investigation meeting.

Relevant facts

[3] NZMAL employed Ms Tina Pio as a Contact Centre Tutor on 22 August 2011 under a written employment agreement she signed on 9 August 2011.

[4] Clause 18(a) of the employment agreement states:

Six weeks' written notice of termination of employment shall be given by either party, but this shall not affect the employer's rights to dismiss an employee without notice for serious misconduct. If the required notice is not given by either party then six weeks' salary shall be paid by the party improperly terminating the employment.

[5] On 2 July 2012, Ms Pio gave notice to NZMAL that she was terminating her employment so her last day of work was to be Friday 3 August 2012. On 9 July 2012 Ms Pio sent a text message to her manager advising that she would not be returning to work.

[6] NZMAL's payroll system generates salary payments part in arrears and partly in advance of the work undertaken. This meant when Ms Pio's last pay was processed she was paid up to and including 11 July 2012. She also received two days' paid sick leave in advance of her sick leave entitlement. The salary overpayments made to Ms Pio amount to \$1,097.23 being three days' pay in advance and two days' sick leave in advance.

[7] Ms Pio was required to give six week' notice of resignation. She breached her employment agreement because she failed to work out four weeks of her six weeks' notice period.

[8] NZMAL claims reimbursement of \$2,975 being the four weeks' wages Ms Pio is required to pay under clause 18(a) of the individual employment agreement for failing to work out four weeks' of her notice period.

[9] NZMAL deducted Ms Pio's annual holiday pay upon termination of \$632.66 from the total amount owing upon termination of \$4,072.23, leaving a balance owed by Ms Pio of \$3,439.57. NZMAL has requested payment of the outstanding amount from Ms Pio on more than one occasion but she has not paid anything.

[10] I am satisfied on the balance of probabilities that Ms Pio owes NZMAL \$3,439.57.

Costs

[11] NZMAL says it incurred legal costs of \$1,863 so it seeks to recover those from Ms Pio. The Authority adopts a notional daily tariff based approach to assessing costs, with the current notional daily tariff being \$3,500. There are no factors which warrant an adjustment to the notional daily tariff.

[12] I award NZMAL \$250 towards its legal costs being pro rata of the notional daily tariff based on the length of the investigation meeting. It is also entitled to recover its filing fee and service fees as disbursements.

Orders

[13] Within 28 days of the date of this determination Ms Pio is ordered to pay NZMAL:

- (a) \$3,439.57 for the balance of her unworked notice period;
- (b) \$250 towards its legal costs;
- (c) \$71.56 to reimburse its filing fee;
- (d) \$270.25 to reimburse its Baycorp (NZ) Limited service fees for personally serving the Statement of Problem and Notice of Hearing on Ms Pio.

Rachel Larmer
Member of the Employment Relations Authority