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Patel v Curry Pot on Lincoln Limited (Christchurch) [2016] NZERA 526; [2016] NZERA Christchurch 188 (20 October 2016)

Last Updated: 2 December 2016

IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

[2016] NZERA Christchurch 188
5581373

BETWEEN KAPILABEN PATEL Applicant

A N D CURRY POT ON LINCOLN LIMITED

Respondent

Member of Authority: Helen Doyle

Representatives: Mohammed Shahadat, Advocate for Applicant

Natu Rama, Advocate for Respondent

Submissions Received: 7 September 2016, from the Applicant

No submissions, from the Respondent

Date of Determination: 20 October 2016

COSTS DETERMINATION OF THE AUTHORITY

Curry Pot on Lincoln Limited is ordered to pay to Kapilaben Patel the following:

- (a) The sum of \$213.32 gross being payment for two alternative days claimed.**
- (b) The sum of \$8,750 being costs together with disbursements in the sum of \$890.18.**

The substantive determination

[1] In my determination dated 23 August 2016 I found that the applicant was owed money for payments made in contravention of the [Wages Protection Act 1983](#) and payments for unpaid wages, working on public holidays and holiday pay from

2011 to 2014. I reserved the issue of costs and set a timetable for an exchange of submissions.

[2] In paragraph [88] of the determination I further reserved the right for the applicant to return to the Authority if a claim for alternative days had been inadvertently left from the statement of problem.

The application

[3] Submissions were lodged on behalf of the applicant with the Authority on

7 September 2016. The timeframe for the respondent to lodge submissions was

22 September 2016. No submissions were lodged at that time on behalf of the respondent. No explanation has been received

as to why no submissions were lodged. I shall proceed to determine the application for costs and two alternative days.

Alternative days

[4] Mr Shahadat claims for two alternative days in the sum of \$264.

[5] [Section 60](#) of the [Holidays Act 2003](#) provides for payment for alternative holidays. I accept that two statutory days were worked as claimed by Mr Shahadat and there was no corresponding payment for an alternative day.

[6] Payment for an alternative holiday must be made at the rate of the employee's relevant daily pay or average daily pay for his or her last day of employment.

[7] I find that the appropriate assessment of what the relevant daily pay for the applicant's last day of employment is in accordance with a variation to the employment agreement that the applicant was to be paid \$640 per week. The applicant's hours varied; however, she usually worked across six days of the week at the time her employment ended. On that basis, I have assessed an average daily rate of \$106.66 gross rather than the \$132 Mr Shahadat claims for each of the two days.

[8] I order Curry Pot on Lincoln Limited to pay to Kapilaben Patel the sum of \$213.32 gross being payment for two alternative days claimed.

Costs

[9] The applicant says that her actual costs are \$13,100 with disbursements of \$1,050.78.

[10] The investigation meeting occupied 2½ days of investigation. I see no good reason in this case to depart from the Authority's usual daily tariff which, at the time of this matter, was \$3,500 per day. As Mr Shahadat has calculated, this would be the sum for costs for two and a half days of \$8,750. I find that is a fair award for costs in the circumstances.

[11] Mr Shahadat has also claimed reimbursement of disbursements. There is a cost claimed for photocopying. Disbursements for ordinary administrative costs not payable to a third party are not usually allowed and I decline that cost of \$58.60. There is also a claim for the applicant's flight from Auckland to Christchurch in the sum of \$96. The applicant's employment at the material time was in Christchurch. The respondent I find is not responsible for the cost of travel for her to attend an investigation meeting to pursue a claim against her employer. I do not allow that claim.

[12] There is a claim for witness expenses for one witness to travel by coach from Alexandra to Dunedin and then from Dunedin to Christchurch and return in the sum of \$157.98. I allow that claim for which receipts have been provided. Attendances are claimed for that witness for two days at \$50 each day being a period he was required to be absent from work. I am prepared to allow that claim for witnesses expenses in the sum of \$100 over two days in excess of a period exceeding three hours each day.¹

[13] I also allow reimbursement for the following disbursement being payments made to third parties as reflected in the receipts and information attached to the costs summary:

(a) Filing fee: \$71.56;

1 [Witnesses and Interpreters Fees Regulations 1974](#)

(b) MBIE hearing fees: \$459.99;

(c) Costs of binding three bundles of documents from Copyland Digital

Print: \$100.65

[13] Disbursements in the sum of \$890.18 are allowed.

Determination

[14] Curry Pot on Lincoln Limited is ordered to pay to Kapilaben Patel the sum of \$8,750 costs and disbursements in the sum of \$890.18.

Helen Doyle

Member of the Employment Relations Authority

