

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 365
5395629

BETWEEN

ADRIAN DAVID PERRY
Applicant

A N D

BRUMBY INVESTMENTS
LIMITED TRADING AS
INSURANCE SOLUTIONS
Respondent

Member of Authority: Rachel Larmer
Representatives: Applicant in Person
No Appearance for Respondent
Investigation Meeting: 11 October 2012 at Auckland
Date of Determination: 15 October 2012

DETERMINATION OF THE AUTHORITY

A Brumby Investments Limited trading as Insurance Solutions is ordered to pay Mr Perry:

- (a) \$6,381.05 gross wage arrears;**
- (b) \$902.48 gross holiday pay;**
- (c) \$122.45 unpaid travel expenses;**
- (d) \$71.56 to reimburse his filing fee.**

Employment relationship problem

[1] Mr Perry commenced employment with Brumby Investments Limited trading as Insurance Solutions (Brumby) on 1 April 2012, working 25 hours per week. Mr Perry completed an IR330 form which he gave to Ms Simonne Aubertin, the

Office Manager, which she has confirmed she filed with other PAYE for the employer to submit to the Inland Revenue Department (IRD).

[2] Although Mr Perry has not received a written employment agreement, he says Marcus Friedlander, the sole director and shareholder of Brumby, assured him on a number of occasions that he had instructed his solicitor to draw up a written employment agreement for him. Despite the absence of an employment agreement Mr Perry was able to produce documents to the Authority which satisfied me he was indeed employed by Brumby.

[3] Mr Perry claims wages arrears, unpaid holiday pay, and unpaid travel expenses. He has also discovered that Brumby has failed to pay any of his PAYE to IRD, despite it paying him nett salary from which he believed tax had been deducted in the normal way.

[4] Mr Perry says he was not paid his full wages when they fell due on 15 June 2012. This situation continued on 22 June and in late June he met with Mr Friedlander who apologised for the missed payments and said that he was refinancing his house so would be able to pay the arrears within a week or two.

[5] The parties agreed that the financial issues would be resolved by 31 July 2012 at the latest. Mr Perry says that he agreed to reduce his hours of work during the month of July where possible in order to save costs.

[6] At the end of July, Mr Perry pressed for payment of his unpaid wages and was told that the matter would be sorted out within days. On 16 August 2012, Mr Perry was directed by a client to an online news story about Mr Friedlander which stated he had been on trial for fraud in the High Court and whose name suppression had expired the previous evening.

[7] As a result of this news Mr Perry immediately resigned in order to protect his own reputation and at that time he provided Mr Friedlander with a statement of the salary arrears and unpaid expenses owed to him. He received an email within an hour of his resignation from Mr Friedlander which stated *resignation accepted*, which was the last contact he had with him.

[8] Mr Perry has unsuccessfully attempted to recover his wage arrears and expenses. On 05 September 2012 Mr Perry wrote to Mr Friedlander's partner Suzanne

Farry, who was registered on 29 June 2012 with the Companies Office as a co-director of Brumby, requesting payment of his wage arrears and unpaid expenses.

[9] Mr Perry's letter was couriered and he produced evidence to the Authority that it had been received by Ms Farry on 11 September 2012. On 14 September 2012 Ms Farry was removed from the Companies Office register as a co-director of Brumby.

[10] Mr Perry seeks:

- a. \$6,382.99¹ gross wage arrears;
- b. Unpaid holiday pay;
- c. \$122.45 unpaid travel expenses.

Service of SoP and NoH

[11] Brumby was served via track and trace courier post with the Statement of Problem at its registered office and also at the home address of its director, Mr Friedlander. Brumby did not file a Statement in Reply within 14 days of service nor has it filed an application for leave to file a Statement in Reply out of time. It has had no communications with the Authority and it failed to attend the Authority's investigation meeting,

[12] I am satisfied that the Notice of Hearing was served on Brumby at its registered office on 25 September 2012. It was signed for on behalf of Brumby by Katrina Rust.

Wage arrears

[13] Mr Perry was employed from 01 April to 16 August 2012. He was paid \$23.32 gross per hour. He worked a total of 483.75 hours over the course of his employment and was paid \$4,900. That leaves a shortfall of salary of \$6,381.05 gross.

He has not been awarded that amount because according to the Authority's calculations based on the pay information he provided his total gross earnings were \$11,281.05 (not \$11,282.99). The Authority calculated his shortfall based on the figures he provided as \$6,381.05, not \$6,382.99 which is the amount he claimed.

[14] I am satisfied on the balance of probabilities from the evidence produced by Mr Perry has is owed wage arrears of \$6,381.05 gross. Brumby is ordered to reimburse him that amount.

Holiday pay

[15] Mr Perry did not receive any holiday pay entitlements upon termination. As an employee who had been employed for less than 12 months employment he is entitled to be paid 8% of his total gross earnings less and holiday pay already paid.

[16] Mr Perry says his total gross earnings were \$11,281.05, so 8% of that is \$902.48 gross. Mr Perry says he has not received any holiday pay either during his employment or after it ended and that he did not take any paid holidays whilst employed.

[17] I am satisfied on the balance of probabilities Mr Perry is owed holiday pay of \$902.48 gross. Brumby is ordered to pay Mr Perry \$902.48 gross in unpaid holiday pay.

Travel expenses

[18] The parties agreed that Mr Perry would be reimbursed at the (then) IRD mileage rate of 0.74c per kilometre for his travel to and from clients. Each week he submitted to Mr Friedlander a schedule of the clients he had visited and the kilometres travelled. Mr Perry produced to the Authority a summary of all clients visited over the course of his employment, the kilometres travelled in respect of each client, and the travel expenses paid and owed.

[19] I am satisfied on the balance of probabilities that Mr Perry is owed \$122.45 in unpaid travel expenses. Brumby is ordered to reimburse him that amount.

Costs

[20] Mr Perry was not legally represented so no issue arises as to costs. He did incur a \$71.56 filing fee, so Brumby is ordered to reimburse him for that.

Orders

[21] Within 28 days of the date of this determination, Brumby is ordered to pay Mr Perry:

- a. \$6,381.05 gross wage arrears;
- b. \$902.48 gross holiday pay;
- c. \$122.45 travel expenses;
- d. \$71.56 for his filing fee.

Rachel Larmer
Member of the Employment Relations Authority