

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2011] NZERA Auckland 518
5342736**

BETWEEN MATTHEW PETTIGREW
Applicant

AND STAINLESS DOWN UNDER
N.Z. LIMITED
Respondent

Representatives Warwick Reid, Advocate for Applicant
Andrew Lilly for Respondent

Member of Authority: Eleanor Robinson

Determination: 6 December 2011

SUPPLEMENTARY DETERMINATION OF THE AUTHORITY

[1] By determination [2011] NZERA Auckland 471 the Authority found that Mr Pettigrew had been unjustifiably dismissed by the Respondent, Stainless Down Under N.Z. Limited (“SDU”).

[2] In that determination Mr Pettigrew was awarded the balance of 3 months lost wages pursuant to s 128(2) of the Employment Relations Act 2000, less the deduction of 1 week’s notice which had been already paid and the amount earned by way of casual employment during the period.

[3] The parties were directed to resolve the quantum between them, however leave was granted for the parties to revert to the Authority in the event that the parties were not able to do so. This being the case, the parties have made application to the Authority for a resolution of the issue.

Determination

[4] Mr Reid submits that the appropriate basis for the 3 months’ lost wages is a pro-rata calculation of Mr Pettigrew’s actual earnings during the previous 12 month period, which equates to a sum of \$12,972.00.

[5] Mr Lilly submits that the appropriate method of calculation is to base this on the actual hours Mr Pettigrew would have worked during the 3 month period had his employment not been terminated. With reference to the actual hours worked during this period by an employee who carried out the same role and duties as Mr Pettigrew, this equates to 459.5 hours at \$23.00 per hour, a sum of \$11,413.98.

[6] In determination [2011] NZERA Auckland 471 I accepted that SDU had been faced with a genuine redundancy situation and that workload had fluctuated during the period immediately preceding Mr Pettigrew's termination. I further accept it as credible that this situation of a fluctuating workload had continued following Mr Pettigrew's departure. In these circumstances I find that calculating the quantum by reference to the hours actually worked by a comparator employee is appropriate.

[7] Mr Lilly based his calculation on an hourly rate of \$23.00 per hour, however at the time of his dismissal Mr Pettigrew's hourly rate was \$25.00 per hour and there had been no suggestion prior to Mr Pettigrew's termination that this hourly rate should be reduced. I consider it appropriate that this is the hourly rate which is applied. On this basis I determine that the relevant sum in respect of the 3 months lost wages is \$12,406.50.

[8] The 1 week's notice period of \$1,000.00 which has already been paid to Mr Pettigrew is to be deducted from this amount. Mr Pettigrew by way of affidavit evidence stated that he earned \$600.00 through casual employment during this period. I accept this evidence and order that the sum of \$600.00 is also to be deducted from this amount.

[9] I order that Mr Pettigrew be paid the sum of \$10,806.50 gross in respect of lost earnings for a period of three months.

Eleanor Robinson
Member of the Employment Relations Authority