

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2016] NZERA Wellington 1  
5459951

BETWEEN           PORSE EDUCATION AND  
                          TRAINING LIMITED  
                          Applicant

AND                 AMY ROYDHOUSE  
                          Respondent

Member of Authority:   Trish MacKinnon

Representatives:       Libby Brown, Counsel for Applicant  
                              Matthew Lawson & Rachael Balasingam, Counsel for  
                              Respondent

Investigation Meeting:   11-13 November 2014 at Hastings

Submissions & Affidavits   13 November 2014, 16 June and 23 September 2015,  
Received:                from the Applicant  
                              13 November 2014, 15 and 27 July 2015 from the  
                              Respondent

Determination:           5 January 2016

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**DETERMINATION OF THE AUTHORITY (No. 2)**

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[1]     In my determination of 31 March 2015 of the claims and counterclaims made by PORSE Education and Training (NZ) Limited (PORSE) and Amy Roydhouse, I disposed of all claims bar one<sup>1</sup>. That was the issue of holiday pay owing to Ms Roydhouse. I had insufficient information on which to determine whether holiday pay was owing and, if so, how much. I reserved my decision on that matter and invited the parties to provide further evidence and submissions.

[2]     They have now done so with affidavits being provided by Ms Roydhouse and Ms Jenny Yule, the Managing Director of PORSE together with submissions from counsel for each party.

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<sup>1</sup> [2015] NZERA Wellington 33.

[3] I have considered the evidence and submissions of both parties but will not record them in any detail in accordance with s.174E of the Employment Relations Act 2000.

[4] PORSE calculates Ms Roydhouse had taken 12 days annual leave more than she was entitled to at the date her employment terminated. In the absence of accurate records of leave taken by Ms Roydhouse, PORSE used Christmas/New Year closedown periods and a calendar kept by Ms Roydhouse to arrive at that conclusion. It also relied on various text messages and emails in which Ms Roydhouse had requested others to undertake work duties for her.

[5] Ms Roydhouse provided entries from the diaries she had kept during her employment at the investigation meeting. She said she had requested holiday and leave records from PORSE but had not been provided with them.

[6] PORSE submits that Ms was given *large amounts of autonomy and trust and confidence to accurately record when she was taking days off from specific work related tasks*. It says she was reminded to follow staff policy and submit leave forms but failed to do so. Her failure resulted in PORSE having to rely on the text messages and other evidence referred to above to form an accurate picture of the leave she had taken.

[7] In her affidavit Ms Roydhouse says the text messages and emails relied on by PORSE cannot be taken as evidence of time taken as holidays. She notes that a number of the messages relate to weekends when she should not be regarded as being on leave if she was not working. She also says that a request to someone to close gates, or feed horses, for her is not evidence that she was not working on the days such requests were made.

[8] Ms Roydhouse's evidence is that she completed leave records for the sick leave she took during her employment and always kept her employer fully informed when she was taking any holidays.

[9] I do not accept the calculations made by PORSE which caused it to conclude Ms Roydhouse had been overpaid for 12 days of holiday. The evidence is

circumstantial at best and I find it to be unreliable. The obligation to maintain records of holidays and leave taken by an employee rests with the employer.<sup>2</sup>

[10] It may be more challenging in a situation where an employee works largely unsupervised as Ms Roydhouse did. However, I accept her evidence of informing her employer of the occasions when she was taking holidays and would not be at work. If and how PORSE recorded that information was an organisational matter for PORSE to manage. I do not accept this is a situation where PORSE can lay the blame on Ms Roydhouse for its failure to maintain records as required by s.81 of the Holidays Act.

[11] Ms Roydhouse deposes that she is owed 18 days annual leave and 6 days for statutory holidays she worked between 12 October 2012 and 21 March 2014.<sup>3</sup> She estimates that, based on her salary of \$50,000 per annum, this equates to the sum of \$3,287.67.

[12] In accordance with s. 83(4) of the Holidays Act 2003, I accept that sum is due to Ms Roydhouse as outstanding holiday pay and direct PORSE to pay her accordingly.

Trish MacKinnon  
Member of the Employment Relations Authority

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<sup>2</sup> Section 81 Holidays Act 2003.

<sup>3</sup> Hawkes Bay Anniversary days in 2012 and 2013; Waitangi Day, Easter Friday, Easter Monday, and Queens Birthday in 2013.