

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**CA 71/07  
5053448**

BETWEEN MEGAN MARIE PURCELL  
Applicant  
AND WIRED COMMUNICATIONS  
NZ LIMITED  
Respondent

Member of Authority: Philip Cheyne  
Representatives: Mark Henderson, Counsel for Applicant  
No appearance for Respondent  
Investigation Meeting: 29 June 2007 at Christchurch  
Determination: 29 June 2007

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Megan Purcell worked for Wired Communications NZ Limited from 5 September 2005 until the employment ended on Friday 9 December 2005. There are several aspects to her problem. Ms Purcell says that she was not paid at the rate that had been agreed before she started work. Secondly, Ms Purcell says that she has a personal grievance arising from the termination of her employment.

**No appearance by the respondent**

[2] The respondent did not lodge a statement in reply. However, its director (Aran Shivnan) participated in a directions conference on 18 January 2007 when he agreed to provide some relevant documents to the Authority and to counsel for Ms Purcell. Mr Shivnan never complied with this direction. No-one for the respondent participated in a second directions conference during which arrangements were made for an investigation meeting. Nor did the respondent comply with the direction to

provide documents and statements of evidence prior to the investigation meeting. The respondent was not represented at the investigation meeting.

[3] I am satisfied that the statement of problem, notices of directions and notice of meeting have all been served on the respondent. There being no good reason for the respondent's failure to appear, I proceeded with the investigation meeting.

[4] During the investigation meeting I raised with counsel the proper categorisation of part of the claim as set out below. To the extent necessary I allow amendment of the statement of problem and also rely on section 160 (3) of the Employment Relations Act 2000.

### **Arrears of wages and holiday pay**

[5] I accept that Ms Purcell was told before commencing her work that she would be paid \$13.00 per hour. However, she was paid less than that during the employment so she is entitled to recover the arrears. Ms Purcell was not paid any wages for her last week's work and did not receive any holiday pay. These sums too can be recovered as arrears of wages on money payable to her.

[6] Ms Purcell worked for 14 weeks averaging 25 hours per week. She was paid for 13 weeks at an average of \$250.00 per week. She is entitled to an additional \$75.00 for each of those weeks, a total of \$975.00. Ms Purcell is also entitled to payment for her last week's work, a further \$325.00.

[7] I calculate Ms Purcell's gross earnings during the employment at \$4,550.00 so she should have been paid holiday pay of \$273.00.

[8] The arrears of wages and other money payable totals \$1,573.00. Wired Communications NZ Limited is to pay that sum to Ms Purcell.

### **Personal Grievance**

[9] I accept Ms Purcell's evidence that she was dismissed without notice or any warning on Friday 9 December 2005 when told by the payroll clerk that there was no further work for her. Ms Purcell attempted to contact Mr Shivnan to find out what was happening but he did not return her calls. The business premises were closed on Monday 12 December 2005. Ms Purcell has not even been able to recover personal possessions from the premises.

[10] It appears that the company has not traded since 9 December although some staff may now be working for another business run by Mr Shivnan. Even (perhaps especially) in the case of apparent business failure such as this, employees are entitled to fair and reasonable treatment. The respondent and Mr Shivnan have fallen well short of this in the sudden, indirectly communicated dismissal and evasive treatment of Ms Purcell. I find that Ms Purcell was unjustifiably dismissed.

[11] I accept that the manner of the dismissal has caused significant and unnecessary harm to Ms Purcell. Wired Communications NZ Limited is to pay Ms Purcell compensation of \$10,000.00 to remedy that harm.

[12] Ms Purcell should have been paid or given notice of dismissal. Wired Communications NZ Limited did not have a written employment agreement specifying a notice period so Ms Purcell is entitled to reasonable notice which I fix at 4 weeks wages. Wired Communications NZ Limited is to pay Ms Purcell \$1,300.00 being 4 weeks wages in lieu of notice.

[13] There is a claim for lost remuneration for the 13 weeks following the dismissal. However, given the apparent business failure, it was inevitable that Ms Purcell's employment with the respondent would have been terminated. In that circumstance, there can be no recovery for that loss.

### **Summary**

[14] Wired Communications NZ Limited is to pay Ms Purcell \$1,573.00 pursuant to section 131 of the Employment Relations Act 2000.

[15] Wired Communications NZ Limited is to pay Ms Purcell \$1,300.00 being 4 weeks wages in lieu of notice.

[16] Wired Communications NZ Limited is to pay Ms Purcell \$10,000.00 pursuant to section 123 (1) (c) (i) of the Employment Relations Act 2000.

[17] There is no reason why costs should not follow the event. The investigation meeting was relatively brief given the respondent's non appearance but counsel still

had to attend two conferences, brief two witnesses and spend time trying to contact Mr Shivnan and ascertain the status of the company. In those circumstances, I order Wired Communications NZ Limited is to pay Ms Purcell costs of \$1,500.00.

Philip Cheyne  
Member of the Employment Relations Authority