

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 211/09  
5285051

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| BETWEEN | JANELLE CLAIRE<br>RATHGEN<br>Applicant       |
| AND     | SPIERTZ INVESTMENTS<br>LIMITED<br>Respondent |

Member of Authority: Helen Doyle

Representatives: The Applicant in person  
No attendance for Respondent

Investigation Meeting: On the papers and telephone conference 7 December 2009

Determination: 7 December 2009

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**DETERMINATION OF THE AUTHORITY**

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## **Employment relationship problem**

[1] Janelle Rathgen was employed by Spiertz Investments Limited at the gym the company owned and operated in Timaru. Mrs Rathgen says that she is owed holiday pay by Spiertz Investments Limited in the sum of \$3,055.86 gross together with two weeks' payment of wages in lieu of notice in the sum of \$810 gross. The two weeks payment in lieu of notice is claimed because the business closed down suddenly and although Mrs Rathgen had resigned she was unable to work out her notice period of two weeks as a result. Mrs Rathgen also seeks reimbursement of her filing fee of \$70.

[2] Mrs Rathgen claimed only holiday pay in her statement of problem but then, in an email to the Authority dated 11 November 2009, said she would like to claim for the extra two weeks' wages in the sum of \$810 gross as, having just handed in her resignation and having been asked to work out her two weeks' notice, the business then closed. I accept that Mrs Rathgen's employment was terminated within her notice period for reasons of redundancy when the business was closed.

[3] In its statement in reply, the company accepts that it owes the amount claimed by Mrs Rathgen for holiday pay but states that the company does not have the funds or assets to settle the outstanding amount.

[4] The senior support officer wrote to Spiertz Investments Limited for the attention of its directors, Ron and Christine Spiertz by letter dated 27 November 2009, acknowledging receipt of the statement in reply and advising that Mrs Rathgen was seeking to claim two weeks' pay in lieu of notice in the sum of \$810 gross in addition to the claim that the company had already received from her for holiday pay. The senior support officer advised that the Authority Member wished to hear from the company about this additional claim and had therefore organised a telephone conference to take place at 9.30am on Monday, 7 December 2009. The senior support officer advised that the call would be placed to the telephone number in the statement of reply.

[5] On the morning of 7 December 2009, the senior support officer put a telephone call through to the telephone number on the letter of 27 November 2009 and Mr Spiertz answered the telephone. The senior support officer then placed Mr Spiertz on hold while he connected Mrs Rathgen to the telephone call. I then proceeded to introduce myself to Mrs Rathgen and Mr Spiertz but there was no response from Mr Spiertz and I concluded, after a short time, that Mr Spiertz must have disconnected from the call for some reason and decided that it would be appropriate to disconnect the call altogether and start the call process again. Another attempt was then made to call Mr Spiertz on the same number, but there was no answer this time. The Authority then proceeded to talk to Mrs Rathgen and confirmed with her the nature of her claim. I have checked with the senior support officer and no further message or explanation has been received from Mr Spiertz prior to the release of this determination about why he was unavailable for the telephone conference.

[6] The company accepts that holiday pay is owed and although provided with an opportunity, did not provide a view on the claim for two weeks' payment in lieu of notice.

[7] I am satisfied that Mrs Rathgen is owed holiday pay and in circumstances where her employment was terminated for reason of redundancy and she could not

therefore work out her notice period by virtue of the business closing, two weeks' payment in lieu of notice under clause 12.1 of her employment agreement.

[8] I accept Mrs Rathgen's calculations and how she arrived at the sum of \$810 on the basis that she always worked 22.5 hours per week and received an hourly rate of \$18.

### **Determination**

#### ***Holiday pay***

[9] I order Spiertz Investments Limited to pay to Janelle Rathgen the sum of \$3,055.86 gross being holiday pay.

#### ***Wages in lieu of notice***

[10] I order Spiertz Investments Limited to pay to Janelle Rathgen the sum of \$810 gross being two weeks' payment in lieu of notice under clause 12 of her employment agreement.

#### ***Reimbursement of filing fee***

[11] I order Spiertz Investments Limited to pay to Janelle Rathgen the sum of \$70 being reimbursement of her filing fee.

Helen Doyle  
Member of the Employment Relations Authority