

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2016] NZERA Wellington 144
5637266

BETWEEN DENISE REID
Applicant

AND ADKINS TAXIS LIMITED
Respondent

Member of Authority: Trish MacKinnon

Representatives: Sandy Dodunski, Counsel for Applicant
No appearance by Respondent

Investigation Meeting: 25 November 2016 at New Plymouth

Determination: 28 November 2016

**RECORD OF ORAL DETERMINATION OF
THE EMPLOYMENT RELATIONS AUTHORITY**

Employment relationship problem

[1] Denise Reid says she was employed as a Taxi Driver with Adkins Taxis Limited from 31 August 2015 until 27 May 2016. She claims holiday pay for that period. Ms Reid also claims she is owed \$20 per week for petrol for the period 24 February 2016 to the end of her employment.

[2] Adkins Taxis Limited (Adkins) did not lodge a statement in reply but its sole director, Mathew Adkins, attended a telephone conference of the parties and the Authority on 4 October 2016. In the course of the telephone conference Mr Adkins acknowledged Ms Reid had been an employee but disputed the dates on which her employment commenced and ceased, and the amount of holiday pay owing to her. Mr Adkins asserted she was employed from 14 September 2015 and finished her employment on 22 May 2016.

[3] With regard to the fuel vouchers, Mr Adkins stated in correspondence to Ms Reid's legal representative of 6 July 2016 that these were out of the kindness of his heart as Ms Reid had told him she was struggling financially. He repeated this in the telephone conference of 4 October 2016.

The Authority's investigation

[4] During the 4 October 2016 telephone conference I set the matter down for an investigation meeting to take place on 25 November 2016 in New Plymouth. An Authority Officer confirmed that date on 13 October 2016 when she sent each party a written Notice of Investigation Meeting. She also confirmed the direction to mediation I had made during the telephone conference, such mediation to take place by 11 November 2016.

[5] Mediation did not take place. I understand this was because the Mediation Service was unable to contact Mr Adkins. An Authority Officer contacted Mr Adkins on the morning of the investigation meeting to remind him it was taking place that day. She informed me Mr Adkins professed to have no knowledge of the investigation meeting and indicated he would not be attending.

[6] I am satisfied the respondent was sent written notification of the investigation meeting's date and venue six weeks in advance of its scheduled date. Accordingly, I proceeded to investigate the matter in the respondent's absence as provided for by Schedule 2, clause 12 of the Act.

[7] At the conclusion of the investigation meeting I issued an oral determination, which is now recorded in writing.

Issues

[8] The issues for determination are:

- (a) When Ms Reid was employed by Adkins;
- (b) The amount of holiday pay owing to her;
- (c) Whether she is entitled to a petrol payment at the rate of \$20 per week and, if so, for what period of her employment.

When did employment commence and finish?

[9] The respondent did not provide wage, time and holiday records. However, in the course of the investigation meeting Ms Reid provided the Authority with a spreadsheet she had formulated from the log books she is obliged to maintain as a taxi driver. This recorded each day she worked and the hours she worked on those days. I am satisfied from the spreadsheet and my sighting of the log books that Ms Reid's first day of employment with Adkins was 31 August 2015 and her last day was 27 May 2016.

What holiday pay is owing?

[10] Ms Reid also provided the Authority with a spreadsheet recording the remuneration she had received during her employment with Adkins. The information was taken from her bank statements. I accept Ms Reid's evidence of having received \$22,767.50 from Adkins over that period.

[11] Ms Reid said she had taken no annual leave during the period of her employment with Adkins and that, when she required leave early in her employment, she took unpaid leave. Ms Reid's spreadsheet of the hours she had worked recorded several days as zero hours soon after she commenced her employment. Her record of remuneration received during her employment supports her assertion that those days were taken as unpaid leave. I am satisfied from Ms Reid's evidence that she took no paid annual leave during her employment.

[12] I have calculated the holiday pay owing to Ms Reid, in accordance with s. 24 of the Holidays Act 2003, to be \$1,821.40.

Is Ms Reid owed payment for petrol?

[13] Ms Reid said she and Mr Adkins agreed he would provide her with a \$20 petrol voucher weekly to assist her with transport expenses between her home in Waitara and New Plymouth where Adkins was based. She said they reached this agreement on 24 February 2016 and it constituted a variation of her employment agreement. As noted above, Mr Adkins had expressed the view that this was a kind gesture from him rather than a contractual entitlement.

[14] It was Ms Reid's evidence that her employer had never provided her with the petrol vouchers in the thirteen weeks of her employment following the agreement being reached.

[15] Ms Reid and Mr Adkins signed (belatedly) an employment agreement on 24 February 2016, a copy of which was provided to the Authority. The document contains several hand written amendments, one of which, for example, changed the amount of sick leave entitlement per year from five days to eight days. Each amendment was initialled by Ms Reid and Mr Adkins.

[16] There is no such amendment recording the agreement that Adkins would provide Ms Reid with a \$20 petrol voucher on a weekly basis. For this reason I am not persuaded there was an intention on Adkins' part for this to form part of Ms Reid's terms and conditions of employment.

[17] The employment agreement was signed by the parties on the same day the discussion over the petrol vouchers took place. I find it more likely than not that, if it was intended to be a contractual term of employment, it would have been recorded in writing on the employment agreement, and initialled by the parties, as the other amendments were. Accordingly I decline this claim.

Orders

[18] Adkins Taxis Limited is ordered to pay Ms Reid her outstanding holiday pay entitlement of \$1,821.40, such payment to be made within 28 days of the date of this determination.

Costs

[19] The issue of costs is reserved.

Trish MacKinnon
Member of the Employment Relations Authority