

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2013] NZERA Wellington 153
5428460

BETWEEN ROBERT TONY ROBINSON
 Applicant

AND GOSHEN HOLDINGS LIMITED
 Respondent

Member of Authority: G J Wood

Representatives: K Coley for the Applicant
 No appearance by or for the Respondent

Investigation Meeting: 26 November 2013 at Palmerston North

Determination: 26 November 2013

ORAL DETERMINATION OF THE AUTHORITY

[1] The respondent in this case, Goshen Holdings Limited (Goshen), consistent with its failure to provide a statement in reply or to attend the directions conference, failed to attend or be represented at the investigation meeting. A support officer was unable to contact Mr Wai Ng, Goshen's sole director at the commencement of the investigation meeting. However, Goshen is still a registered company and has been served with notice of these proceedings and this investigation meeting.

[2] No good cause being shown therefore for its failure to attend or be represented, I elected to investigate the employment relationship problem in full as if Goshen had been represented, pursuant to clause 12 of Schedule 2 to the Act.

[3] At the investigation meeting, I questioned the applicant, Mr Robinson, on his circumstances and his monetary claims, which he explained. I accept his evidence, particularly as he accepted some matters to his disadvantage, such as his pay rate, which forms the basis of my findings below. I also had recourse to the parties'

employment agreement and wage and time records kept by Goshen's former office manager.

[4] Mr Robinson was employed by Goshen as a foreman truck driver and was paid \$15 per hour on the basis of a 45 hour, six day a week job. His employment lasted between February 2005 and 4 April 2013, when his employment was terminated for redundancy, following the loss of a cartage subcontract in February. However, Mr Robinson had continued to be paid at a lesser temporary agreed rate of \$400 net per week after a meeting on 14 February between himself and Mr Ng, held to discuss the fact that Mr Robinson had not been paid. At the meeting, Mr Robinson was informed that Goshen had lost the cartage subcontract, which Mr Robinson was not aware of until after his recent return from an extended holiday. Mr Robinson's pay then stopped completely in March. He was told nothing, despite requests for information, until 4 April when he received a letter of redundancy. While that letter was dated 31 December, I accept that Mr Robinson had never seen it previously, nor had it ever been provided to him, on the basis that he was still working through December, the ostensible date of the letter.

[5] Mr Robinson was never paid his notice period for redundancy, for which he claims three weeks' pay, constituting \$2,025 gross. He was not paid his outstanding holiday pay which, according to the office manager's records, was 63 days, namely \$7,087.50 gross. Neither was Mr Robinson ever paid for statutory holidays that he worked. That means he is still owed 51 days pay at time and a half, namely \$8,606.25 gross.

[6] I accept, as did Mr Robinson, that this was a genuine redundancy following the loss of Goshen's major contract, with no alternative work being able to be obtained in the next two or three months. However, I conclude that this matter involves an unjustified dismissal/disadvantage to Mr Robinson, because there was no consultation or notice paid, as was required under the parties' employment agreement. Therefore, how Goshen acted was not how a fair and reasonable employer could have acted in all the circumstances.

[7] Given that I have accepted that this as a genuine redundancy situation, there can be no claim for lost remuneration following the redundancy. However, the absence of any fair procedure did have a significant impact on Mr Robinson. He is entitled to compensation for the way he was left in the dark, with his life on hold, for

several months, but not compensation for loss of the job itself. I consider that \$4,000 compensation is appropriate for the way he was treated.

[8] I therefore order the respondent, Goshen Holdings Limited, to pay to the applicant, Robert Tony Robinson, the following sums:

- (a) \$2,025 gross for unpaid notice;
- (b) \$7,087.50 gross for unpaid holiday pay;
- (c) \$8,606.25 gross for unpaid public holidays; and
- (d) \$4,000 net as compensation under s.123(1)(c)(i) of the Act.

Costs

[9] Mr Robinson seeks costs of \$3,500 plus GST, together with the filing fee of \$71.56. This was a very short hearing, and little preparation was required for the investigation meeting, apart from obtaining and analysing the leave records. In all the circumstances, I order the respondent, Goshen Holdings Limited, to pay to the applicant, Robert Tony Robinson, the sum of \$1,500 in costs, plus \$71.56 for the filing fee.

G J Wood
Member of the Employment Relations Authority