

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 120/10
5152561

BETWEEN

ERIC NOEL SIMMONS
Applicant

A N D

CONCRETE PLUS LIMITED
Respondent

Member of Authority: Paul Montgomery
Representatives: Mr Simmons in person
Mr John Tillson, for Respondent
Investigation Meeting: 18 November 2009 at Nelson
Submissions Received: On the day
Determination: 12 May 2010

DETERMINATION OF THE AUTHORITY

[1] Mr Simmons claims his former employer owes him holiday pay for a total of 12 days due to him when he resigned from his employment with the respondent. Further, the applicant said he is owed a further 8½ days as the additional week of annual leave agreed with the employer was later *removed under duress*.

[2] The respondent rejects the applicant's claims except for one day annual leave. It says that, following an investigation by a Labour Inspector, it was found that day of leave was payable but the employer offered 2.2 days payment to settle the matter. The applicant declined the offer. The parties attempted to resolve the issues in mediation but were unable to do so.

Analysis and discussion

[3] The documentation surrounding this matter is extensive and there is no need to analyse it in detail. The day the parties agree remains unpaid is 22 October 2007.

[4] The respondent denies any duress was applied to the applicant in respect of the employment agreement. It suggests the majority of the claim arises from Mr Simmons becoming disgruntled with his then employer and is now chancing his arm making claims regarding *time in lieu* which had not been granted and to have been working while on holiday in Tonga. Further it says the additional weeks leave was not removed under duress.

[5] The Authority has had the benefit, as have the parties, of a thorough investigation and report by a very able Labour Inspector. Her analysis of the factual matrix and the company records arrived at the conclusion the respondent owes Mr Simmons one day of annual leave. Having reviewed all the documents before the Authority, I have no reason to overturn the findings of Ms Baldwin's report.

[6] On the balance of probabilities, the applicant is owed no more than one day's pay.

Determination

[7] The respondent is to pay Mr Simmons the sum equivalent to one day's pay. It is also to reimburse him for the \$70 filing fee.

Costs

[8] Each party represented themselves before the Authority and there was no evidence that either had incurred legal costs with regard to the Authority's investigation. In such circumstances, there will be no order for costs.

Paul Montgomery
Member of the Employment Relations Authority