

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2017] NZERA Christchurch 94
3005372

BETWEEN LARISSA STEVENSON
Applicant

AND EVERLAST DESIGN
LIMITED
Respondent

Member of Authority: Andrew Dallas

Representatives: Applicant in person
No appearance for the Respondent

Investigation Meeting: On the papers

Determination: 14 June 2017

DETERMINATION OF THE AUTHORITY

A. Everlast Design Limited (Everlast) must pay Larissa Stevenson within 28 days of the date of this determination:

- (i) \$1,114.89 gross as unpaid wages;**
- (ii) \$94.00 as unpaid overtime pay;**
- (iii) \$2,860.13 gross as unpaid holiday pay;**
- (iv) \$2,173.56 gross as deducted, but not remitted, student loan repayments;**
- (v) \$1,148.20 gross as deducted, but not remitted, KiwiSaver contributions; and**
- (vi) \$1,148.20 as KiwiSaver employer contributions.**

B. There is no order for costs.

Employment relationship problem

[1] Larissa Stevenson was employed by Everlast Design Limited (Everlast) as an architectural designer from 10 October 2015 until 7 October 2016. Ms Stevenson's employment was governed by an individual employment agreement.

[2] Ms Stevenson claims she is owed unpaid wages, unpaid holiday pay, unremitted student loan contributions and KiwiSaver contributions (employer and employee).

[3] Ms Stevenson sought to recover these outstanding amounts directly from Everlast. Her efforts over several months to obtain wage records and recover these amounts from Everlast proved fruitless.

Issues

[4] The following is the issue for determination by the Authority:

- (i) Is Ms Stevenson owed unpaid holiday pay by Everlast?
- (ii) Is Ms Stevenson owed unpaid wages by Everlast?;
- (iii) Is Ms Stevenson owed unpaid overtime pay by Everlast?
- (iv) Is Ms Stevenson owed deducted, but not remitted, student loan repayments by Everlast?;
- (v) Is Ms Stevenson owed deducted, but not remitted, KiwiSaver contributions by Everlast?; and
- (vi) Is Ms Stevenson owed KiwiSaver employer contributions by Everlast?

The Authority's investigation

[5] Ms Stevenson lodged a statement of problem in the Authority seeking payment of the outstanding wages, holiday pay, unpaid overtime pay, deducted, but not remitted, student loan repayments, deducted, but not remitted, KiwiSaver contributions and KiwiSaver employer contributions.

[6] Everlast did not lodge a statement in reply or seek leave to lodge one out of time. The Authority also had no communication from Everlast's sole director, Dillon Lewis. I am satisfied that Everlast was properly served by the Authority.

[7] Having taken into account the surrounding circumstances outlined above, I decided to investigate Ms Stevenson's employment relationship problem on the papers under s 174D of the Employment Relations Act 2000 (the Act).

[8] As Ms Stevenson had sought wage and time records from Everlast and these were not forthcoming, Ms Stevenson was asked by the Authority to quantify her wages, unpaid holiday pay and unpaid overtime pay claims and other claims.

[9] Ms Stevenson subsequently provided these calculations to the Authority. She said she was owed \$1,114.89 gross as unpaid wages, unpaid overtime of \$94.00 gross (to which she was entitled under her employment agreement), unpaid holiday pay of \$2,860.13 gross, \$2,173.56 gross as deducted, but not remitted, student loan repayments, \$1,148.20 gross as deducted, but not remitted, KiwiSaver contributions and \$1,148.20 as KiwiSaver employer contributions.

[10] In response to the above information, I formed the view, in reliance on section 132(2) of the Employment Relations Act 2000, an order for payment of the wages arrears, holiday pay and overtime pay. I also decided it was appropriate to make the other orders based on the information and calculations provided by Ms Stevenson.

[11] On 19 May 2017, a Member's Minute was issued to the parties setting out the nature of Ms Stevenson's employment relationship problem. Everlast was asked to provide written comment on Ms Stevenson's claims. Neither Everlast nor an authorised representative on its behalf provided written, or other, comment.

Ms Stevenson's claims for unpaid wages, holiday and overtime pay.

[12] Ms Stevenson claimed that she was owed \$1,114.89 gross as unpaid wages, unpaid overtime of \$94.00 gross (to which she was entitled under her employment agreement) and unpaid holiday pay of \$2,860.13 gross. Ms Stevenson provided calculations and other information to justify this claim.

[13] Everlast failed to produce wage and time records to assist Ms Stevenson in the calculation of the claim for wages and unpaid holiday. In the absence of any information from Everlast disproving the claim and in reliance on s 132(2) of the Act, I accept Ms Stevenson's claims for unpaid wages and holiday pay.

[14] Everlast must pay Ms Stevenson \$1,114.89 gross as unpaid wages, \$94.00 gross as unpaid overtime pay and \$2,860.13 gross unpaid holiday pay within 28 days of the date of this determination.

Ms Stevenson's claim for student loan repayments

[15] Ms Stevenson said she was owed \$2,173.56 gross as deducted, but not remitted, student loan repayments by Everlast. She provided a calculation and other information in support of this claim. Ms Stevenson's claim was not disproved or otherwise contradicted by Everlast. On the above bases, I am prepared to accept Ms Stevenson's claim is made out.

[16] Everlast must pay Ms Stevenson \$2,173.56 gross as deducted, but not remitted, student loan repayments within 28 days of the date of this determination.

Ms Stevenson's claims for KiwiSaver contributions

[17] Ms Stevenson said she was owed \$1,148.20 gross as deducted, but not remitted, KiwiSaver contributions and \$1,148.20 gross as KiwiSaver employer contributions. She provided calculations and other information in support of these claims. Ms Stevenson's claim was not disproved or otherwise contradicted by Everlast. On the above bases, I am prepared to accept Ms Stevenson's claims are made out.

[18] Everlast must pay Ms Stevenson \$1,148.20 gross as deducted, but not remitted, KiwiSaver contributions and \$1,148.20 gross as KiwiSaver employer contributions within 28 days of the date of this determination.

Costs

[19] There is no order for costs.

Andrew Dallas
Member of the Employment Relations Authority