

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2013] NZERA Christchurch 191  
5409343

BETWEEN DEBRA LEE THOMPSON  
Applicant  
AND LICHFIELD  
INTERNATIONAL LIMITED  
Respondent

Member of Authority: Helen Doyle

Representatives: Applicant in person  
Andrew Shipley, Advocate for Respondent

On the papers and 13 and 19 August 2013  
additional information:

Date of Determination 12 September 2013

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**DETERMINATION OF THE AUTHORITY ON  
REOPENING OF INVESTIGATION**

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**A. The investigation is reopened.**

**B. In addition to amounts already awarded Ms Thompson is awarded \$211.51 being unpaid wages for 15 November 2012, holiday pay on that amount of \$16.92 and interest on those amounts from 1 February 2013 until the date of payment at 5 per cent per annum.**

[1] In my determination dated 7 August 2013, [2013] NZERA Christchurch 159, I found that Ms Thompson was owed various sums including the sum of \$840.51 for unpaid wages and wages deducted incorrectly for reimbursement of advanced annual leave. Orders were made for the payment of holiday pay on the sum and interest on the combined sums was payable from 1 February 2013 until the date of payment at 5% per annum.

[2] Ms Thompson contacted the Authority after receipt of the determination and maintained that the Authority should award one further additional day's pay for 15 November 2012 which fell within her notice period but was unpaid. The Authority had not been persuaded that the final pay period ended on 14 November 2012 as it stated in paragraph 16 of that determination, relying on the relevant pay slip that provided the pay period ended on 15 November 2012. Ms Thompson advised the Authority that the pay period in fact ended on 14 November 2012.

[3] The Authority advised both parties that it was considering reopening its investigation and asked for a variety of further information from Ms Thompson. The Managing Director of Lichfield International Ltd, Andrew Shipley was asked for his view on any reopening on 12 August 2013 but he did not respond to any information provided as at that date by Ms Thompson or provide any other information to the Authority.

[4] On receipt of Ms Thompson's individual employment agreement the Authority wrote a minute to the parties advising that the Authority had received a copy of the employment agreement. It set out that Schedule 1 to that agreement is particularly relevant as it refers to both remuneration and payment. It provides that Ms Thompson's salary payments are to be made monthly *on the 15th*. The Authority advised in its minute that this tended to support Ms Thompson's claim that salary is paid to the 14<sup>th</sup> of each month on the 15<sup>th</sup>.

[5] The Authority advised in its minute that it had decided to reopen its investigation under clause 4 of Schedule 2 to the Employment Relations Act 2000 to determine whether Ms Thompson is owed payment of \$211.51 for 15 November 2012.

[6] Mr Shipley was given a final opportunity to respond and provide any further information by 4pm on Wednesday, 4 September 2013. He was asked to advise whether he wished to be heard. The Authority has received no further information or advice from Mr Shipley.

### **Authority's power to reopen**

[7] In *Heritage Expeditions Ltd v Fraser* [2010] NZEMPC 35, Judge Couch considered clause 4 of the Second Schedule to the Employment Relations Act 2000. It was held in that case that the Authority had the power to reopen its investigation

under that clause of its own volition. Judge Couch stated that the power conferred by clause 4 must be exercised judicially and in accordance with the statutory role of the Authority. It was held that this would include ensuring that all parties potentially affected by the exercise of the Authority's powers are fully and fairly informed of what is to be considered and have a proper opportunity to be heard [25 and 26]. I am satisfied in this case that the respondent did have an opportunity to be heard on the question as to whether the Authority should reopen its investigation and, if so, whether there was one additional day's pay owing to Ms Thompson that had not been taken into account in the original determination.

**Should the Authority reopen on the limited basis proposed?**

[8] The relevant paragraph in the determination is [16]. It provides as follows:

*That leaves the unpaid period of notice. I am not persuaded that the final pay period ended on 14 November 2012. I find that it ended on 15 November 2012 as is stated on the pay slip which is a Thursday. I find that Ms Thompson is only owed one additional days pay for 16 November 2012. I have taken her claim of 13 hours as set out in the statement of problem to be for two unpaid days instead of one. I intend to award half of 13 hours claimed of 6.5 hours. At Ms Thompson's hourly rate of \$32.54 that is an additional sum of \$211.51.*

[9] The information provided in support of the reopening was initially a variety of payslips which were inconclusive as to the pay period. A copy of Ms Thompson's employment agreement was then provided. Schedule 1 of the employment agreement supported Ms Thompson's view that the pay period ended on the 14th of each month as payment of salary was stated to be *Monthly on the 15th*. As the Authority stated in the minute to the parties that would tend to support Ms Thompson's view as to the pay period ending on the 14<sup>th</sup> of each month as in order for salary to be paid on the 15<sup>th</sup> the funds would have to be in her bank account by the previous evening.

[10] Ms Thompson gave a letter of resignation to the respondent on Friday 19 October 2012 and in it advised that her last day would be 18 November 2012. Ms Thompson was reimbursed in the original determination for Friday 16 November 2012 which was a date that fell within her notice period but for which she was not paid. 17 and 18 November were a Saturday and Sunday so no issue of reimbursement arose. That leaves the issue of whether payment had actually been made to Ms Thompson for 15 November 2012. Ms Thompson said that it was not. Mr Shipley, despite being given two opportunities, has failed to provide the Authority

with any information or advice as to that matter from the perspective of the respondent.

[11] I am satisfied that in light of the contents of the employment agreement a miscarriage of justice would occur if the reopening application was not granted for the limited purpose of addressing the issue of one additional day's pay. I accept that it would not have been anticipated by Ms Thompson or indeed the Authority that initially there would have been such an issue about when the pay period ran from. In all the circumstances I am satisfied that I should reopen the determination about one day's pay.

[12] I find on the balance of probabilities that it is more likely than not that Ms Thompson was not paid for 15 November 2012 for the reasons set out above. Ms Thompson is entitled to be reimbursed for one additional day's pay for 15 November 2012. That is the sum of \$211.51. Ms Thompson is also entitled to holiday pay on that sum of \$16.92. She is also entitled to interest on those amounts, that is \$211.51 plus \$16.92 from 1 February 2013 to the date of payment at the rate of 5% which is the interest rate prescribed for the purposes of s.87(3) of the Judicature Act 1908. This is on the same basis as the other awards attracted interest and holiday pay in the original determination.

### **Determination**

[13] The entitlement to payment in paragraph [16] of determination [2013] NZERA Christchurch 159 for Ms Thompson is to be changed to include the additional amount of \$211.51 as set out in paragraph 12 hereof. The total amount of unpaid wages and wages deducted incorrectly including this new amount is \$1,052.02. There is an amount of holiday pay owing of \$16.92 on the sum of \$211.51. Ms Thompson is entitled to interest payable on the additional amounts of \$211.51 and \$16.92 from 1 February 2013 to the date of payment at 5% on the same basis as set out in the original determination for the other awards. In all other respects the determination, including findings and other orders made remain the same.

Helen Doyle  
Member of the Employment Relations Authority

