

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2013] NZERA Christchurch 159  
5409343

BETWEEN DEBRA LEE THOMPSON  
Applicant  
  
A N D LICHFIELD  
INTERNATIONAL LIMITED  
Respondent

Member of Authority: Helen Doyle  
  
Representatives: Applicant in person  
Andrew Shipley, Advocate for Respondent  
  
Investigation Meeting: 30 July 2013 at Christchurch  
  
Date of Determination: 7 August 2013

---

**DETERMINATION OF THE AUTHORITY**

---

- A. Lichfield International Limited is ordered to pay to Debra Thompson the sum of \$840.51 for unpaid wages and wages deducted incorrectly for reimbursement of advanced of annual leave.**
- B. Lichfield International Limited is ordered to pay holiday pay on the sum of \$840.51 of \$67.24 and interest is payable from 1 February 2013 until the date of payment on the total sum owing of \$907.75 at 5% per annum.**
- C. Lichfield International Limited is ordered to reimburse Debra Thompson for her filing fee in the sum of \$71.56.**

**Employment relationship problem**

[1] Debra Thompson seeks wages that she says were unpaid in her final pay together with holiday pay on those wages. Additionally at the Authority investigation meeting Ms Thompson said that she wanted interest payable on any award made and asked that she be reimbursed for two hours wages that she says were wrongly deducted from her final pay as reimbursement for annual leave paid in advance.

[2] Lichfield International Limited (Lichfield International) was represented at the investigation meeting by its Managing Director Andrew Shipley. Mr Shipley said that there were issues about Ms Thompson's ACC claim and payments she received in circumstances where the company advanced Ms Thompson both sick and annual leave payments. In those circumstances he advised Lichfield International has done nothing to review her final pay and Mr Shipley was not in a position to give evidence about the merits or otherwise of Ms Thompson's claim.

[3] I gave Mr Shipley additional time after the investigation meeting and then further additional time after Mr Shipley made a request for it in which to talk to the company accountant about the new issue raised by Ms Thompson that two hours had been incorrectly deducted from Ms Thompson's final pay as reimbursement of annual leave paid in advance. There has been no response received from him about that matter more than a week after the Authority expected to have received a response.

**Background to the claim**

[4] Ms Thompson resigned from Lichfield International and gave her resignation in writing. The letter of resignation provided with the statement of problem was undated however there was no issue taken with Ms Thompson's evidence that the resignation was provided on Friday 19 October 2012. It was from that date that notice was to run. Ms Thompson specified in her written letter of notice that her last day was 18 November 2012.

[5] On 22 October 2012 Ms Thompson was advised by Mr Shipley that she was not required to work out her notice period. I accept that Ms Thompson was prepared to have worked out her notice period.

[6] Ms Thompson is paid monthly. When she received her final pay slip she said that instead of her normal monthly hours of 140.83 she was only reimbursed for

123.50 hours and was therefore short paid 17.33 hours. Further, Ms Thompson said that she was not paid at all for days that she otherwise would have worked from 15 November 2012 to 18 November 2012 and is owed for that period 13 hours.

[7] Ms Thompson says that she is owed payment in total for 30.33 hours at her hourly rate of \$32.54 which is the sum of \$986.94. She seeks holiday pay on that sum at 8%. On checking I noticed that 17 and 18 November 2012 fell on a Saturday and a Sunday. I had a support officer email Ms Thompson and Mr Shipley about this and gave them a further opportunity to comment on whether that would change the amount claimed. Unfortunately the Authority referred in error to the date of 19 November 2012 which is a Monday.

[8] Ms Thompson responded within the time period given to do so and advised that the pay period was always from the 15<sup>th</sup> to the 14<sup>th</sup>. She provided a pay slip other than her final pay slip and it did provide that it was a pay advice slip for the pay period ended 14/09/12. That does not assist me though as the final and material payslip provides on the top that it is a pay slip for the pay period ended 15/11/12. Ms Thompson went on to state in her email that the new pay period that covered the end of her notice period includes 15, 16 and 19 November. She describes 19 November 2012 as her final day. Ms Thompson was not assisted I accept by the Authority mentioning 19 November 2012 in its email to her. Nevertheless Ms Thompson's last day is clearly stated in her letter of resignation to be 18 November 2012 which is a Sunday and that must therefore be her last day.

[9] Mr Shipley did not respond within the time period the Authority set for doing so.

### **Issues**

[10] From that background the following are issues to be determined by the Authority:

- (a) Was Ms Thompson paid her correct entitlements in her final pay?
- (b) Were 26.33 hours rather than 24.33 hours deducted by Lichfield International as reimbursement of annual leave incorrectly?

- (c) If there is to be any award made, should there be an award of interest and holiday pay?

**Was Ms Thompson paid her correct entitlements in her final pay?**

[11] Lichfield International advanced Ms Thompson annual and sick leave to cover an unexpected period when she was unwell in or about mid June 2012.

[12] The leave advanced was reimbursed from Ms Thompson's final pay and save for the two hours referred to above she takes no issue with that.

[13] Mr Shipley confirmed that he had not verified why Ms Thompson was paid less than what her normal hours would have been for the pay period ending 15 November 2012. He could advance no explanation as to why the remaining day or days of the notice period had not been paid. He said that he was concerned that there may have been some dishonesty on the part of Ms Thompson with respect to her ACC claims and subsequent payments made to her. He had requested but had not received the ACC payment schedule as Ms Thompson said that it was confidential to her and irrelevant to her employment relationship problem.

[14] I was not satisfied that the ACC payment schedule would be a matter material to my decision making. I advised Ms Thompson and Mr Shipley of this. Mr Shipley said that he would be satisfied if I looked at the ACC payment schedule and confirmed it was in order. Ms Thompson agreed to provide the Authority in the first instance with a copy of her payment schedule from ACC for the relevant period. I read the pay schedule and I was satisfied that the payments made were for the period which Ms Thompson was absent from Lichfield International and there was nothing untoward about them. I advised Mr Shipley of this and did not consider it necessary to forward the payment schedule to him.

[15] I accept Ms Thompson's evidence that she normally received payment each month for working 140.83 hours. There was no explanation from Lichfield International as to why there was only payment for 123.50 hours for the pay period ending 15 November 2012. I find that Ms Thompson was short paid 17.33 hours in her pay for that period. At Ms Thompson's hourly rate of \$32.54 that is the sum of \$563.92.

[16] 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 was 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.

[17] In conclusion I find that Ms Thompson is entitled to be paid for an additional 23.83 hours (17.33 hours and 6.5 hours) for the period up to 15 November 2012 in the combined sum of \$775.43.

[18] I order Lichfield International Limited to pay to Debra Lee Thompson the sum of \$775.43 being unpaid wages.

**Were 26.33 hours rather than 24.33 hours deducted by Lichfield International as reimbursement of annual leave incorrectly?**

[19] The pay slip for the period ending 14 June 2012 seems to support that Ms Thompson was only required to reimburse Lichfield International for 24.33 hours of leave taken in advance rather than the 26.33 hours that was actually deducted in the final pay. I did want to hear from Mr Shipley about this issue as it was not absolutely clear and had been raised for the first time at the investigation meeting. As set out earlier he did not respond to the Authority about that matter. In the absence of any response, and on the basis of the pay slip for the pay period ended 14 June 2012 Ms Thompson is entitled to be reimbursed for 2 additional hours at the rate of \$32.54 per hour. That is an amount of \$65.08.

[20] I order Lichfield International Limited to pay to Debra Lee Thompson the sum of \$65.08 being reimbursement of two hours wages deducted incorrectly from her final pay.

**If there is to be an award, should there be an award of interest and holiday pay?**

[21] The Authority has the power to award interest by virtue of clause 11 of the second schedule of the Employment Relations Act 2000 if it thinks fit to do so.

[22] When this issue was raised at the investigation meeting Mr Shipley told the Authority that he felt imposing interest was unfair because Lichfield International had paid Ms Thompson annual leave and sick leave entitlements in advance and incurred interest payments on its overdraft facilities as a result. He accepted that Lichfield International was reimbursed for the advances in November 2012.

[23] I am of the view that there should be interest awarded on the amounts owing but that to recognise there was an advance of money to Ms Thompson by Lichfield International interest should apply from 1 February 2013 rather than from the end of the notice period in November 2012.

[24] Ms Thompson is also entitled to holiday pay calculated at 8% on the sum of \$840.51 which is the sum of \$67.24.

[25] There is to be interest payable on the combined amounts of \$775.43, \$65.08 and sum of \$67.24 which is the sum of \$907.75 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.

### **Costs**

[26] Ms Thompson was not represented at the investigation meeting but she has been successful and is entitled to reimbursement of her filing fee in the sum of \$71.56.

Helen Doyle  
Member of the Employment Relations Authority