

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 206/09  
5158157

BETWEEN                      TRANSOTWAY LIMITED  
   Applicant  
  
AND                              JAMES ROBERT DOWIE  
   Respondent

Member of Authority:      Philip Cheyne  
  
Representatives:              Carolyn Crisp, Representative for the Applicant  
   James Dowie, the Respondent in person  
  
Investigation Meeting:      1 December 2009 at Christchurch  
  
Determination:                1 December 2009

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**DETERMINATION OF THE AUTHORITY**

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[1] James Dowie worked for Transotway Limited. His employment ended by reason of redundancy in October 2007. Transotway says that it overpaid Mr Dowie and it wants to recover the overpayment. Mr Dowie denies that there was any overpayment. His statement in reply says *When I left employment Redundancy was four weeks notice Four Weeks Redundancy & Holidays*. To resolve this matter I will explain what happened and resolve the dispute over whether there was an overpayment.

[2] Mr Dowie's dealings over his redundancy were with his branch manager (Tony Gould). In evidence Mr Dowie said that he was told by Mr Gould that he would get four weeks ordinary pay. He agreed, he signed some document presented by Mr Gould who retained the document and he finished work. His last day of work was 18 October 2007. Mr Dowie does not remember the contents of this document. He did not ask for nor was he given a copy at the time.

[3] Mr Dowie was paid \$4,309.00 (net) on 24 October 2007, being four weeks wages in lieu of notice, wages for time worked and holiday pay. Mr Dowie then received \$599.00 (net) on 31 October and again on 7 November, \$569.00 (net) on 14 November and \$568.00 (net) on 21 November. These payments were made by direct credit into Mr Dowie's bank account in accordance with the provision in the employment agreement for the payment of salary. The payments then stopped.

[4] Transotway wrote to Mr Dowie in December 2007 explaining that *Unfortunately your details were not deleted from our Company records thus resulting in your salary continued for the next four weeks* and asking him to repay \$2,335.00. This was pursued through Transotway's debt recovery processes that included use of a debt recovery firm who attempted to file proceedings in the District Court which the Court rejected. A statement of problem was lodged in the Authority, it was eventually served on Mr Dowie, he lodged a statement in reply, there was a phone conference and today's investigation meeting.

[5] Mr Dowie gave evidence but Mr Gould did not. Mr Gould no longer works for Transotway and to Mr Dowie's (and the respondent's) knowledge is in Australia.

[6] Mr Dowie's evidence on the critical point is mentioned above.

[7] There is a signed employment agreement. It says *Where the employee's employment is terminated by reason of redundancy, the employer shall not make a severance payment to that employee, in addition to that employee's contractual notice requirement. In the case of redundancy, the period of notice shall in no case be less than four weeks.* In other words, notice but not compensation was contractually required.

[8] There are two emails between Mr Gould and head office dated 16 October and 18 October 2007. The first one says *Jim Dowie has come to me and asked to take the redundancy I offered him. I would prefer us to pay Jim out his last months pay and his last day to be Thursday....* I infer that he had his manager's approval to initiate this discussion. The second one says *Jim Dowie's last day was today. He has been made redundant. We are to pay him for 4 days this week ...and pay all holiday's, lieu days owing and 4 weeks ordinary pay.* That was an instruction to payroll and the HR manager was copied in. These communications between Mr Gould and head office

are on the footing that Mr Dowie was to receive pay in lieu of notice. There is no mention of severance or compensation.

[9] If Mr Dowie's position as set out in his statement in reply is correct, Mr Gould offered something additional to what was contractually required, what had been discussed with his manager and what he advised payroll and the HR manager had been agreed by way of the termination arrangements. I find it is unlikely that Mr Gould would have offered something additional to the contractual requirements and the arrangements as described by him to head office in these emails.

[10] I have considered Mr Dowie's evidence and his demeanour today. His evidence does not cause me to resile from my view just expressed that it is unlikely that Mr Gould would have offered or agreed to anything more than the contractual requirements. Mr Gould probably did tell Mr Dowie that he would be paid four weeks pay ordinary pay but it was perfectly clear that he was referring to this as a payment in lieu of notice. I reject Mr Dowie's position that there was an agreement for him to get four weeks redundancy in addition to the payment in lieu of notice.

[11] I accept Transotway's position that Mr Dowie was kept on the payroll by mistake and that he was overpaid \$2,335.00. If Mr Dowie did sign anything when he finished work, there is no reliable evidence to indicate that it was an agreement for terms different to those provided for in the employment agreement. I also accept that Transotway has not been able to find any such document in Mr Dowie's file.

[12] Transotway's action to recover this overpayment is an action arising from or related to its employment relationship with Mr Dowie so I accept it falls within the Authority's jurisdiction.

### **Orders**

[13] Mr Dowie is to repay \$2,335.00 to Transotway Limited.

[14] Mr Dowie is to pay interest on this amount at the rate of 4.8% per annum commencing on 22 November 2007 until paid in full.

[15] It is unclear whether Transotway has incurred any legal cost in the Authority proceedings other than the lodgement fee so I will reserve costs. Transotway may have 7 days to lodge a memorandum and serve it on Mr Dowie; and Mr Dowie may

lodge and serve a reply in writing within a further 7 days. Mr Dowie's address for service is the email address given by him during today's meeting.

Philip Cheyne  
Member of the Employment Relations Authority