

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 162/10  
5160476

BETWEEN

LUKE TREADWELL  
Applicant

AND

STRAYCAT CHARTERS  
LIMITED  
Respondent

Member of Authority: Yvonne Oldfield  
Representatives: Mr Treadwell in person  
No appearance for respondent  
Investigation Meeting: 7 April 2010  
Determination: 8 April 2010

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment Relationship Problem**

[1] Mr Treadwell worked for the respondent, Straycat Charters Limited, from October 2007 until January 2009. The work was not full time. In his capacity as skipper of a charter yacht Mr Treadwell was paid for each trip and for intermittent maintenance work on the vessel at an hourly rate of \$25.00.

[2] He has now come to the Authority with a claim for payment for annual and statutory holidays and for arrears of wages. Straycat Charters Limited has not responded to the claim at any stage since it was lodged in the Authority, has not replied to telephone messages left by the Authority support officer and was not represented at the Authority's investigation meeting.

[3] *Courierpost* have confirmed to the Authority that both the Statement of Problem and the notice of investigation meeting were delivered to the respondent's registered office and that on both occasions receipt was acknowledged in writing.

[4] Given these circumstances I proceeded to take evidence from Mr Treadwell and now determine the matter on the basis of the information I have obtained from him.

### **Determination**

[5] Mr Treadwell's claim is as follows:

1.	Holiday pay @ 8% of total earnings	\$1,557.60
2.	Balance of payment due for statutory holidays worked	\$230.00
3.	Short payment in final pay	\$295.00

[6] Mr Treadwell also claims reimbursement of the filing fee of \$70.00.

[7] The first two items were quantified for Mr Treadwell by a Labour Inspector. I was provided with a copy of an opinion from the Inspector which set out how she had arrived at her figures. I was also given copies of correspondence between her and Mr Treadwell which indicated that she based her calculations on pay records supplied by the respondent. I was provided with copies of pay records which Mr Treadwell said were those in question, passed on to him by the Inspector.

[8] The Inspector's calculations are consistent with the records. The respondent had not given Mr Treadwell any paid holidays or otherwise paid out holiday pay. Because of the intermittent nature of his work, the Inspector calculated the arrears of annual holiday pay at 8% of his total earnings as set out in the pay records (\$19,240.00 gross, plus balance owed for the final pay.)

[9] As for the statutory holidays, the records showed that Mr Treadwell worked on the following statutory holidays: 26 December 2007, 1 and 2 January 2008, 27 October 2008 and 25 December 2008.

[10] For four of those days the respondent had paid Mr Treadwell his ordinary pay instead of the penal loading to which he was entitled for working a statutory holiday.

In respect of Christmas Day 2008, the respondent had overpaid Mr Treadwell. Adjusting for this overpayment, the Inspector claimed the balance owed: \$230.00. I note that the correspondence indicated some initial uncertainty over the number of statutory days worked but this was resolved in the final opinion and does not appear to have been a matter of dispute between the parties.

[11] On the information I have I am satisfied that the Labour Inspector's opinion is correct.

[12] Mr Treadwell's other claim is that his final pay was short by \$295.00. This final pay was made after Mr Treadwell presented his final timesheet which recorded hours worked on maintenance and other miscellaneous duties. The total he recorded as being due for that work was \$1,185.00 (\$985.00 as set out in the schedule and a further \$200.00 for time spent covering for another employee.)

[13] Three hours of this were said to be spent in preparation of the timesheet itself. Mr Treadwell told me that this arose because he had to return to Paihia to do it after the employment ended. However he acknowledged that he could have been expected to prepare the record of hours worked before he finished up, thus saving the trip. I am satisfied that the claim for those three hours was not reasonable.

[14] The rest of the hours worked appear uncontroversial. I was provided with email correspondence between the parties. It acknowledges the \$200.00 owed for cover for the other employee, and gives no indication of any dispute about what maintenance work was done or how long it took.

[15] Part of that correspondence (from the respondent) also records that \$350.00 was deducted from Mr Treadwell's final pay in respect of an outboard motor. Mr Treadwell told me that the motor went missing from the boat when it was in his care. He acknowledged that (because he felt responsible) he had agreed to contribute to the cost of its replacement. He told me that he had not originally agreed to pay this much (he recalls \$150.00.) However, the respondent subsequently provided the Labour Inspector with a quote showing that it would cost over \$1,530.00 to replace the motor. Having seen that, Mr Treadwell told me he was prepared to accept that the deduction of \$350.00 was reasonable.

[16] After making deductions of \$75.00 (for the three hours spent preparing the schedule of maintenance hours) and of \$350.00 (for the contribution to the cost of a new motor) the total due to be paid in Mr Treadwell's final payment becomes:

\$1, 185.00
- \$75.00
- <u>\$340.00</u>
<u>\$760.00</u>

[17] The records and email correspondence with which I was provided show that Mr Treadwell was in fact, paid \$540.00 in total (in two payments of \$200.00 and \$340.00 respectively.) He is therefore owed an outstanding balance of \$220.00.

[18] He is also entitled to reimbursement of the fee for filing in the Authority.

[19] **In summary, the respondent, Straycat Charters Limited is ordered to pay to Mr Treadwell the following sums:**

- i. \$1,557.60 gross holiday pay;**
- ii. \$230.00 gross being short payment for statutory holidays worked;**
- iii. \$220.00 gross being short payment of his final pay, and**
- iv. \$70.00 filing fee.**

Yvonne Oldfield

Member of the Employment Relations Authority