

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2014] NZERA Christchurch 123  
5456954

BETWEEN                      AMBER RIA TUUTA  
Applicant

A N D                              KIRSTY       SIMPSON       t/a  
FLAWLESS       HAIR       AND  
BEAUTY  
Respondent

Member of Authority:       M B Loftus

Representatives:            Amber Tuuta on her own behalf  
   Kirsty Simpson on her own behalf

Investigation Meeting:      13 August 2014 at Rangiora

Submissions Received:      At the investigation meeting

Date of Determination:      14 August 2014

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     This is a claim for moneys owing to, or for the benefit of, Ms Tuuta and payable by Ms Simpson.

[2]     Ms Simpson concedes the bulk of the claim but contends there are circumstances which warrant a reduction in one of the amounts claimed for outstanding wages and holiday pay.

**Background**

[3]     Ms Tuuta was employed by Ms Simpson as a senior hair stylist in April 2012. She left Ms Simpson's employ in February 2014 and in doing so took some of the

clientele with her. That has been a cause of angst and is, given what I heard, probably the reason why this claim has progressed as far as it has.

[4] The parties agree that as at the date of cessation, Ms Tuuta was due \$1,649.01 net in outstanding wages and holiday pay. She only received \$500 with Ms Simpson withholding the balance on account of three alleged debts, the removal of clientele and anger at a breakdown in communication between the two occasioned by Ms Tuuta's departure.

[5] Annoyed at the response, Ms Tuuta took a closer look at her wage slips and discovered further omissions. She claims there is \$5,096.62 which has been deducted from her wages to cover PAYE, KiwiSaver contributions and student loan repayments. She claims documents obtained from the Inland Revenue Department show the money has not been forwarded as it should have.

[6] Ms Simpson essentially accepts this claim and attributes the omission to various difficulties she has faced.

### **Determination**

[7] As already said, this is a claim for moneys either owing to, or for the benefit of, Ms Tuuta. The claim for moneys owing directly to Ms Tuuta relates to unpaid wages and holiday pay in the amount of \$1,149.01 net.

[8] Ms Simpson concedes the money has not been paid but contends it should be reduced. Her offset claim, however, faces some difficulties. First the amount withheld is inappropriate given the contended debt. It totals \$368.83 which is significantly less than the amount withheld.

[9] Second, the employment agreement does not contain a clause authorising deductions from pay. Section 5(1) of the Wages Protection Act 1983 would therefore preclude the offset in the absence of a formal application. There isn't one and even if there were it would be unlikely to succeed on the evidence I have heard.

[10] \$140 of the claimed amount relates to the provision of a service which Ms Simpson accepts she previously provided to Ms Tuuta as part of the employment agreement. Given the claim relates to a service provided prior to cessation there is no rationale for not operating in accordance with the agreement and supplying the service

free of charge. \$173.83 of the claim relates to damage it is alleged Ms Tuuta caused to equipment in her care. The only support for the claim is a hearsay accusation from a third person who was not present at the investigation meeting. The claim would not succeed on that evidence.

[11] The final portion of the claim (\$55) is disputed. It is for an applicant (in this instance Ms Simpson) to establish a case that requires response. Ms Simpson's evidence in support of this claim would fall well short of that required.

[12] For the above reasons I conclude the amount claimed is owing in full.

[13] Turning to the claim money was deducted from Ms Tuuta's wages for forwarding to the Inland Revenue Department but remains with Ms Simpson. Ms Simpson accepts moneys were deducted but not forwarded. She does not dispute the amounts Ms Tuuta cites. I, however, will make some minor alterations as a result of the fact the final pay slip is a duplication of two earlier ones. Ms Tuuta accepted that when I asked her about it and advised she had included all three in her calculations.

[14] I therefore conclude the sum of \$2,056.06 has been deducted in respect of Ms Tuuta's KiwiSaver contributions (\$813.08) and her student debt repayments (the balance, \$1,242.98).

[15] The Kiwisaver contribution is, and but for the debt the student loan repayments would have been, Ms Tuuta's. They are to be forwarded to the Inland Revenue Department forthwith.

[16] Similarly action should be taken to address the PAYE shortfall with alacrity as ultimately Ms Tuuta may be held responsible for that (s.BB 2(1) of the Income Tax Act 2007).

### **Costs**

[17] Ms Tuuta has been successful with her claim and in the normal course of events would be entitled to a contribution toward the cost of doing so. As, however, she represented herself recoverable costs are limited to the Authority's filing fee of \$71.56. I believe it appropriate Ms Tuuta be recompensed accordingly and will order payment of the fee in addition to the above amounts.

**Conclusion and orders**

[18] For the above reasons, I order the respondent, Kirsty Simpson, to:

- (a) Pay the applicant, Amber Tuuta, the sum of \$1,149.01 net being outstanding wages and holiday pay; and
- (b) Pay Ms Tuuta an additional \$71.56 (seventy one dollars and fifty six cents) as a contribution toward costs; and
- (c) Forward the sum of \$2,056.06 to the Inland Revenue Department in respect of Ms Tuuta's KiwiSaver contributions and student loan repayments; and
- (d) Address the outstanding PAYE with alacrity.

M B Loftus  
Member of the Employment Relations Authority