

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2012] NZERA Wellington 2
5361317

BETWEEN GEORGE VAN MEEUWEN
Applicant

AND SARSHA HEALEY
Respondent

Member of Authority: G J Wood

Representatives: George van Meeuwen on his own behalf
No attendance by or for the Respondent

Investigation Meeting: 12 January 2012 at Wellington

Determination: 12 January 2012

DETERMINATION OF THE AUTHORITY

[1] The applicant, Mr van Meeuwen, claims \$2,576.19 net in overpaid holiday pay against the applicant, Ms Healey, for failure to repay that sum as agreed, after she took holidays in advance. He also seeks \$71.56 in expenses to cover the Authority's filing fee.

[2] Despite a number of interventions by the Authority, Ms Healey did not provide a statement in reply, nor did she attend on a directions conference, even though she had been served notice of it. A process server subsequently served Ms Healey notice of the investigation meeting.

[3] Ms Healey was unable to be contacted by a support officer on the morning of the investigation meeting, but she had previously stated that she knew that she owed the money, but did not have the ability to repay it. Given Ms Healey's history of avoiding the investigation process, I was satisfied that no good cause had been shown for her failure to attend or be represented. I therefore determined to act as fully in the matter as if Ms Healey had duly attended or been represented.

[4] I have accepted the evidence of Mr van Meeuwen, which was backed by documentation and Ms Healey's acceptance of the claim. My findings are therefore as follows.

[5] When Mr van Meeuwen bought the client database of what was Alexis Hair and Beauty in June 2011, he also agreed to continue to employ all Alexis' existing staff. Ms Healey, a beauty therapist, was one of those staff members. She was employed by Mr van Meeuwen from 20 June under a written individual employment agreement. Before commencing work for him she told Mr van Meeuwen that she had already booked a holiday for July and wanted to take that holiday if she was going to work for him. She offered to Mr van Meeuwen that if he would pay her during that holiday period, despite it being virtually all payment in advance on holiday pay, she would work for the rest of the year without any holidays. Furthermore, the section in the parties' employment agreement provides that the employer "*may recover the amount paid to the employee for holidays taken in advance that is not covered by the employee's annual holiday entitlement*".

[6] Ms Healey subsequently took all of July off and returned in early August. She then worked for Mr van Meeuwen for little more than a week before resigning. She accepted the following in writing in her resignation email: "*I realise you paid me my holiday pay so I will pay that back in full*".

[7] Ms Healey has continued to say that she would pay the amount and at one point proposed instalment payments, but these were never initiated. Ms Healey still acknowledges that she owes Mr van Meeuwen the money, but claims that she can not afford to pay it at present. She has made no formal efforts to organise a schedule of payments, or repay any part of the sum owing.

[8] I am accordingly satisfied that Ms Healey owes the sum of \$2,576.19 net to Mr van Meeuwen and that the sum is owed pursuant to the parties' employment relationship. It therefore constitutes an employment relationship problem over which the Authority has exclusive jurisdiction. Mr van Meeuwen is entitled to his money back as per the parties' agreement.

[9] I therefore order the respondent, Sarsha Healey, to pay to the applicant, George van Meeuwen, the sum of \$2,576.19 net, plus \$71.56 in expenses for the Authority filing fee.

G J Wood
Member of the Employment Relations Authority