

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 245
5461276

BETWEEN

MINOU VAN VLIET
Applicant

A N D

AMPHIBIANS SWIMMING
ACADEMY LIMITED
Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in person
No appearance for Respondent

Investigation Meeting: 18 June 2014 at Auckland

Date of Determination: 18 June 2014

DETERMINATION OF THE AUTHORITY

- A. Within 28 days of the date of this determination Amphibians Swimming Academy Limited is ordered to pay Ms van Vliet:**
- a. \$1,257 wage arrears;**
 - b. \$1,530 unpaid notice;**
 - c. \$222.96 unpaid holiday pay;**
 - d. \$71.56 filing fee.**

No mediation

[1] Ms van Vliet applied to Mediation Services for mediation but Amphibians Swimming Academy Limited (Amphibians) did not respond to requests to attend mediation. Mediation has not occurred.

No Statement in Reply

[2] Amphibians was served with Ms van Vliet's Statement of Problem on 21 May 2014. It has not filed a Statement of Reply. It did not seek leave to file a Statement in Reply out of time.

No appearance

[3] Amphibians was served with the Authority's Notice of Hearing but it did not appear at the investigation meeting today.

Failure to comply with directions

[4] Amphibians failed to comply with the Authority's direction to provide Ms van Vliet's wage and time and holiday and leave records. It emailed the Authority on 09 June 2013 saying it has instructed lawyers and all relevant information would be provided by 13 June. That did not occur. No information has been provided by Amphibians.

Employment relationship problem

[5] Ms van Vliet entered into an individual employment agreement with Amphibians on 26 May 2013. She was initially paid \$16 per hour but that increased to \$17 per hour in August 2013. Ms van Vliet was contracted to work a minimum of 12 hours a week; Monday, Tuesday and Wednesday 3.30pm to 6.30pm and Sundays from 9am to 12pm.

[6] The parties agreed Ms van Vliet would start work on 04 June 2013 however that did not occur. Ms van Vliet did not agree to defer her start date and she did not agree for forgo payment for this period. She is entitled to be paid for the days on which she was ready willing and available to work but Amphibians elected not to provide her with work to do. Amphibians is ordered to pay her \$144 for the 9 hours she was contracted to work over the period 04-10 June 2013.

[7] Despite being ready, willing and available to work Amphibians elected not to provide Ms van Vliet with work during some of her contracted hours. Ms van Vliet did not agree to forgo wages but she was not paid for the days Amphibians elected not to give her work to do.

[8] Ms van Vliet is owed 20 hours she was not paid for. Nine hours were when she was paid \$16 per hour and eleven hours while she was paid \$17 per hour. Amphibians is ordered to pay Ms van Vliet \$331 (9 hours x \$16 and 11 hours x \$17 per hour) for failing to give her work during her contracted hours.

[9] Ms van Vliet was not paid for three statutory holidays that would otherwise have been ordinary working days for her (Labour Day 28 October/Christmas Day and New Years Day 2014). She is owed \$187 being 11 hours pay (3 hours each on Labour and Christmas Days and 5 hours on New Years Day) at \$17 hours per hour.

[10] Ms van Vliet was not paid for the last two weeks' of her employment (two weeks commencing 3 and 10 March 2014). Amphibians is ordered to pay her \$595 (35 hours x \$17 per hour).

[11] Amphibians failed to pay Ms van Vliet the four weeks' notice it agreed to pay her when it terminated her employment. It is ordered to pay her \$1,530 unpaid notice.

[12] Ms van Vliet was not paid any holiday pay upon termination. Amphibians is ordered to pay her \$222.96 (\$2,787 x 8%) unpaid holiday pay.

[13] Ms van Vliet as the successful party is entitled to be reimbursed for her filing fee. Amphibians is ordered to pay her \$71.56 for that.

[14] Amphibians is ordered to pay Ms van Vliet the \$3,017.46 she has been awarded within 28 days of the date of this determination.

Rachel Larmer
Member of the Employment Relations Authority