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Viggars v Pretty Spoilt Ltd (Wellington) [2011] NZERA 613; [2011] NZERA Wellington 139 (2 September 2011)

Last Updated: 28 September 2011

IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

[2011] NZERA Wellington 139

5343939

BETWEEN

AND

CARA ANN VIGGARS Applicant

PRETTY SPOILT LIMITED

Respondent

Member of Authority: Representatives:

Investigation Meeting: Determination:

P R Stapp

Alex Watt and Daniel Vincent, Counsel for the Applicant

No appearance for the Respondent

1. 1 September 2011 at Wellington
2. 2 September 2011

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Ms Viggars has claimed her full wage entitlements and the reimbursement of money that was deducted from her wages for a staff Rarotonga trip during her employment. Despite requests the wages and money deducted have not been paid. There has been no written response and reply from the respondent. The respondent has been served with the papers and notices for the investigation meeting.

Issues

[2] Is Ms Viggars entitled to any payment of holiday pay owing from June 2010

to February 2011?

[3] Is Ms Viggars entitled to the reimbursement of sums paid towards the staff Rarotonga trip fund?

[4] Which party is entitled to costs and how much?

The facts

[5] Ms Viggars was employed from Pretty Spoilt Ltd to work from June 2010 and it lasted until 29 December 2010. She worked

around 30 hours per week at a rate of \$16.00 per hour over this time. Her job was set out in a job description in an employment agreement that involved the following roles:

- (i) Colour technician (hair dressing);
- (ii) Salon assistant; and
- (iii) Nail technician.

[6] Ms Viggars says that in and about August 2010 it was suggested that employees at the salon have money deducted from their wages to pay for a staff holiday to Rarotonga. Ms Viggars agreed to this and had \$15 per week deducted from her wages (pay slip produced). She understands that this money was placed in a special account for the proposed staff holiday. The money was set aside, but no trip took place. There were no other conditions in place.

[7] Ms Viggars says that she was advised that her hours would change to casual and that no further hours were offered to her after 29 December 2010. She resigned her employment on 10 February 2011. Her resignation is not an issue.

[8] She provided written notice of her resignation and requested payment of the holiday payment owing and reimbursement for her contribution to the Rarotonga holiday fund. There was no immediate response to this request and no payment made. She tried to get a response by ringing and leaving messages. She says she was sent a text and that the company would pay the amounts owing. Indeed an email from the respondent to Ms Viggars supports this. However nothing was paid. She has still not been paid the amounts.

[9] In the absence of wage time and holiday records Ms Viggars has estimated that the amounts owing are:

- (i) 8% of her gross earnings for the period from June 2010 to February 2011 - estimated to be around \$757.89.
- (ii) The reimbursement of sums paid towards the Rarotonga trip fund and this amounts to approximately \$215.00.

[10] She has based her calculations on a copy of her pay slip for the week ending 29 August 2010, contact with the Inland Revenue Department and the email in which the respondent accepted the amount of holiday pay owing. The pay slip also provides proof that there were deductions for the trip.

[11] In addition Ms Viggars is legally aided. She is required to pay back the grant of legal aid up to a value of \$2,070. This is confirmed in a document produced. Her actual costs will amount to \$2,691.94 including \$224.59 disbursements.

Determination

[12] Ms Viggars is owed the two sums she has claimed. I accept her estimates where there have been no wage time and holiday records produced. The respondent has had an opportunity to respond and reply to Ms Viggars's claims. It did not take up that opportunity, and there has been no good cause provided for the respondent's absence at the Authority's investigation meeting. The respondent has not helped and assisted this investigation.

[13] Ms Viggars is owed \$757.89 holiday pay. Should this amount prove to be more if more reliable information becomes available I grant leave for the applicant to apply for any further consideration of a variation to this sum.

[14] In addition Ms Viggars is entitled to the refund of the sums deducted from her wages for the Rarotonga staff trip. I accept this amount is \$215.00.

[15] On the basis that Ms Viggars's claim requested any other sums as the Authority can award I hold that this is a matter for interest because Ms Viggars has been denied the use of her money. She has requested the payments without any proper response from the respondent and without any good reasons for payments not being made. I set the interest at 5% per annum on both sums from the 10 February 2011 until the Authority's investigation meeting 1 September 2011 (203 days). This is in accordance with s 87 of the [Judicature Act 1908](#) and clause 3 of the [Judicature \(Prescribed Rate of Interest\) Order 2011](#).

[16] The respondent has put Ms Viggars to the expense of incurring costs to recover the amount of her claim. The amount of her legal aid grant is within the notional daily tariff and I award her \$2,070 costs plus disbursements of \$71.56 for the filing fee and \$103.50 service costs. I have struck out the claim for office expenses which do not include receipts and invoices.

Orders of the Authority

[17] Pretty Spoilt Limited is to pay Cara Ann Viggars:

- (a) \$757.89 holiday pay. Plus interest of \$21.07.
- (b) \$215.00 reimbursement of sums deducted from her wages. Plus

interest of \$5.97.

- (c) \$2,070 costs plus \$175.06 disbursements.

