

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2012] NZERA Auckland 462  
5388954

BETWEEN VITACO HEALTH NZ  
LIMITED  
Applicant

AND SHARLEEN TAVIONI  
Respondent

Member of Authority: Rachel Larmer  
Representatives: Dana Toeke, HR Advisor for Applicant  
No appearance by Respondent  
Investigation Meeting: 17 December 2012  
Determination: 17 December 2012

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**DETERMINATION OF THE AUTHORITY**

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**A Ms Sharleen Tavioni is ordered to pay Vitaco Health NZ Limited within 28 days of the date of this determination:**

- (a) \$1,118.13 overpaid wages;**
- (b) \$84.43 unpaid staff account;**
- (c) \$71.56 to reimburse its filing fee;**
- (d) \$232.25 to reimburse its service fees.**

**Employment Relationship Problem**

[1] Vitaco Health NZ Limited (Vitaco) employed Ms Sharleen Tavioni as an International Customer Services Officer on 11 January 2012. She was employed on a fixed term basis which was due to expire on 31 March 2012.

[2] Ms Tavioni was paid monthly on the 15<sup>th</sup> of the month, two weeks in arrears and two week in advance by direct credit into her nominated bank account. Ms



Tavioni was paid as normal on 15 March 2012 so her wages for that month included two weeks pay in advance.

[3] Ms Tavioni's employment ended when she failed to turn up to work report to work from 16 March onwards. This meant Ms Tavioni received ten days' wages for the period 19 – 30 March when she did not attend work. She receives \$180.74 per day so was overpaid \$1,807.40.

[4] Ms Tavioni also had an unpaid staff account of \$84.43 when her employment ended.

[5] Ms Tavioni did not take any annual leave during her employment so she is entitled to be paid 8% of her total gross earnings upon termination. Ms Tavioni's total gross earnings (excluding the overpayment) from 11 January to 18 March 2012 were \$8,615.91 so 8% of that means her annual holiday pay entitlement was \$689.27.

[6] Vitaco seeks an order that Ms Tavioni repay it \$1,202.56 being overpayment of \$1,807.40 plus staff account of \$84.43 less holiday pay of \$689.27.

[7] Vitaco has also incurred a \$71.56 filing fee plus service fees of \$232.25 for having the Statement of Problem and Notice of Hearing personally served on Ms Tavioni by Baycorp (NZ) Limited.

[8] Ms Tavioni did not file a Statement in Reply within 14 days of service of the Statement of Problem. She may therefore only defend these proceedings with the leave of the Authority. No leave application has been made and Ms Tavioni failed to attend the Authority's investigation meeting, which I am satisfied she had notice of. Baycorp served the Notice of Hearing and a letter from the Authority advising it could proceed to determine Vitaco's claim in her absence on Ms Tavioni on 29 November 2012.

[9] Vitaco wrote to Ms Tavioni on 29 March 2012 asking for repayment of the amount owed. It wrote to her again on 18 April making a final demand for payment. Vitaco emailed Ms Tavioni on 20 April about the debt and she responded by email on 22 April saying "I will make part payments until the total amount is paid off."



[10] No payments were made. Vitaco emailed Ms Tavioni again on 23 April and 18 May requesting payment and advising legal action would be taken to recover the amounts outstanding if she did not repay what she owed. Vitaco says no money has been received from Ms Tavioni.

[11] I order Ms Tavioni within 28 days of the date of this determination to pay Vitaco:

- \$1,202.56 overpaid wages and unpaid staff account
- \$71.56 to reimburse its filing fee
- \$232.25 to reimburse it for the service fees charged by Baycorp.

[12] Vitaco's bank account details for Ms Tavioni to pay the money owed into are set out in the letter Vitaco sent her dated 29 March 2012. Ms Tavioni may also contact Ms Toeke directly at Vitaco to arrange payment.

The seal of the Employment Relations Authority of New Zealand is circular. It features the text "THE SEAL OF THE EMPLOYMENT RELATIONS AUTHORITY OF NEW ZEALAND" around the perimeter, with a star at the bottom. In the center is the coat of arms of New Zealand, which includes a crown, a shield with a cross, and two figures holding a shield.

**Rachel Larmer**  
Member of the Employment Relations Authority

