

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

[2013] NZERA Christchurch 239
5396442

BETWEEN JUSTINE WARD
Applicant

AND KATHERINE SOPER t/a
SOPHISTICUTZ
Respondent

Member of Authority: M B Loftus

Representatives: Anjela Sharma, Counsel for Applicant
Kay Chapman, Advocate for Respondent

Investigation Meeting: On the papers

Submissions received: Various exchanges up to and including 18 November 2013

Determination: 18 November 2013

DETERMINATION OF THE AUTHORITY

[1] On 4 October 2013 I issued a decision upholding Ms Ward's claim she had been unjustifiably dismissed. I also found in her favour in respect of various claims regarding unpaid monies though issues arose when trying to quantify what was owing due to the state of the records and a difficulty reconciling net and gross amounts.

[2] I left it to the parties to try and determine an amount but leave was reserved for them to return should they be unable to conclude the matter. They have returned for a determination.

[3] My conclusion was Ms Ward was owed holiday pay in the amount of \$3,374.67 gross. \$1,118.02 net had already paid along with some PAYE on that amount.

[4] Ms Sharma now seeks \$2,111.31 as the residual amount.

[5] She arrived at that figure having concluded \$145.34 had been deducted as PAYE before the \$1,118.02 had been paid. Ms Chapman has confirmed the calculation is correct.

[6] A further issue has, however, arisen in that Ms Ward now asks the gross amount be paid to her and she address any tax issues that may result. She does so as Ms Soper's business is no longer operating.

[7] I decline to do so. Holiday pay is wages (s.86 of the Holidays Act 2003) and wages are subject to PAYE which must be deducted and forwarded to the Inland Revenue by the employer (s.RA5(1) of the Income Tax Act 2007).

[8] Ms Soper employed Ms Ward in a personal capacity. The fact she has ceased trading does not extinguish obligations she may have to either Ms Ward or the Inland Revenue as a result. Ms Soper must therefore deduct an appropriate amount of PAYE from the residual amount and forward to the Inland Revenue as required by the Income Tax Act. She is to provide Ms Ward with evidence of both the amount and the fact she has done so.

[9] Therefore, and for the forgoing reasons, paragraph 47(iii) of the earlier substantive decision ([2013] NZERA Christchurch 207) is now redacted and replaced with the phrase:

- iii. A further \$2,111.31 (two thousand, one hundred and eleven dollars and thirty one cents) gross being unpaid holidays. An appropriate amount of PAYE is to be deducted prior to payment and forwarded to the Inland Revenue.

[10] Finally I note Ms Ward seeks clarification concerning her claim for interest. None was made in the original decision and that will not change for reasons enunciated therein. As was said in paragraph 45, there was little point in adding discretionary sums to the awards already made and increasing the possibility of default by Ms Soper.