

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2014] NZERA Christchurch 103  
5435392

BETWEEN                      ROBERT AARON WHITE  
   Applicant  
  
A N D                              TELECOM NEW ZEALAND  
   LIMITED  
   Respondent

Member of Authority:        Helen Doyle  
  
Representatives:              Mark Henderson (Counsel) and Geraldine Biggs  
   (Advocate) for Applicant  
   Emma Butcher, Counsel for Respondent  
  
Investigation Meeting:       Memorandum of counsel for applicant received on 1 July  
   2014  
   Email from respondent received on 11 July 2014  
  
Date of Determination:       14 July 2014

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**DETERMINATION (No.2) OF THE AUTHORITY**

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- A.     Telecom New Zealand Limited is to pay to Aaron White the sum of \$38,095.70 for lost commission and holiday pay on that sum of \$3,047.66 gross.**
- B.     Interest is payable on lost commission and holiday pay from 27 May 2013 until the date of payment at the rate of 5%.**
- C.     Costs were reserved in the determination dated 25 June 2014 and will be determined when submissions have been received from both parties.**

**Determination of quantum of lost commission**

[1] In my determination dated 25 June 2014 I found that Mr White was entitled to be reimbursed for commission lost as a result of a retrospective increase to his sales target [76] and for the reduction in his commission due to retrospective discounting of his mobile re-win claims [102].

[2] I delayed the making of final orders as to the amount of reimbursement, holiday pay and interest for seven days in order to obtain clarification about this amount of lost commission from counsel.

[3] Mr Henderson in a memorandum as to the quantum of lost commission says that the amount awarded should be the amount of \$38,095.70 not taking into account holiday pay or interest. I accept that the amount of lost commission that Mr White is entitled to the sum of \$38,095.70 as it appears in spreadsheet *AW Doc 1* at page 179 of the agreed bundle of documents. That figure was referred to in final submissions as the remedy claimed but had above it only the amounts of \$9,437.79 and \$21,547.30 which do not add up to \$38,095.70. I accept that was simply an error and that the correct figure is \$38,095.70 on the basis set out in the spreadsheet and evidence.

[4] Ms Butcher advised that Telecom had no submissions to make in response.

[5] I order Telecom New Zealand Limited to pay to Robert White the sum of \$38,095.70 being lost commission.

**Holiday Pay**

[6] There is a claim for holiday pay. Mr White is entitled to holiday pay on the sum of \$38,095.70. I have calculated this on the basis of 8% of \$38,095.70 which is \$3,047.66 gross.

[7] I order Telecom New Zealand Limited to pay to Robert White the sum of \$3,047.66 gross being holiday pay on lost commission.

**Interest**

[8] There is a claim for interest on the lost commission. The Authority has the power in a matter involving the recovery of money to order interest be payable if it

considers it appropriate to do so under clause 11 of the 2nd Schedule to the Employment Relations Act 2000.

[9] The evidence supported meetings and correspondence with Mr White from in or about September to November 2012 to explain why some changes had been made. By mid-November 2012 it was clear Telecom was not going to re-visit its position further. A letter from Mr White's counsel dated 27 May 2013 made it clear that Mr White intended to pursue the matter further.

[10] I find that interest should be payable on the combined sums of lost commission and holiday pay of \$41,143.36 at the rate prescribed under s.87.3 of the Judicature Act 1908 of 5% from 27 May 2013 until the date of payment and I so order.

### **Costs**

[11] I reserved costs in my earlier determination and will determine costs when submission have been received from both parties.

Helen Doyle  
Member of the Employment Relations Authority