

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**AA 418/09  
5148911**

BETWEEN                      ALEXANDER WIEGERINCK  
Applicant

AND                              FARMERS TRADING  
COMPANY LIMITED  
Respondent

Member of Authority:      Vicki Campbell

Representatives:            Applicant in Person  
Penny Swarbrick for Respondent

Investigation Meeting:      18 September 2009 at Hamilton

Submissions Received:      4 October 2009 from Applicant  
1 October 2009 from Respondent

Determination:               30 November 2009

---

**DETERMINATION OF THE AUTHORITY**

---

[1] Mr Alexander Wiegerinck claims the commission paid to him during his employment with Farmers Trading Company (“Farmers”) was not calculated correctly and in accordance with his employment agreement. Mr Wiegerinck seeks a recalculation of his commissions paid since April 2007. He claims a total of \$35,000 by way of recovery of wages or other money is owed to him pursuant to s 131 of the Employment Relations Act 2000.

[2] During the course of the investigation meeting it was agreed by consent that the Authority would deal with the matter by first assessing whether Farmers has any liability towards Mr Wiegerinck, and if so, the issue of quantum will be dealt with separately.

[3] The onus is on Mr Wiegerinck to demonstrate he has been paid incorrectly, and that he is owed unpaid remuneration by way of commission payments.

[4] Mr Wiegerinck is employed by Farmers as a One on One Salesperson at the Tauranga store. His employment is subject to the terms of a written individual employment agreement. The employment agreement provides for the payment of remuneration by way of an hourly rate for each hour worked plus the payment of commissions calculated in accordance with the Farmers One on One Commission Package (“the Commission Package”).

### **One on One Commission Package**

[5] The Commission Package provides two options for calculation and payment. Mr Wiegerinck is paid pursuant to Option 2. Commission is calculated on the basis the gross profit on Mr Wiegerinck’s eligible One-on-One sales multiplied by his commission rate.

[6] The Commission Package sets out a table to demonstrate how the gross profit is calculated. It became clear during the investigation meeting that the essential issue for Mr Wiegerinck is the way in which Farmers are applying “Product Margin” to the commission calculations.

[7] The principles of interpretation of employment agreements are well settled. The Commission Package defines Product Margin thus:

Farmers will estimate the cost of each SKU sold (#3 above) using a fixed initial margin for the department. The initial margin percentage represents the average purchase margin for each department and includes any costs incurred in the purchase. The initial margin will be reviewed quarterly or as required if major movements in margin occur. [my emphasis]

[8] It was common ground that “department” refers to a line of goods such as beds, washing machines, refrigerators etc. Mr Wiegerinck considers that the “average purchase margin for each department” includes only direct costs and not those costs associated with distribution, marketing and advertising.

[9] I have accepted the submissions on behalf of Farmers that the Commission Package is to be interpreted in light of its purpose which is stated as being “...for profitable sales performance in the big-ticket areas of the business.” [my emphasis]

[10] The wording of the definition of Product Margin is clear and unambiguous. Farmers has the discretion to determine the cost of each SKU sold. I accept that such costs may properly include shipping, insurance, any costs associate with storage etc.

[11] Mr Wiegerinck also raised concerns over the interpretation of the word “purchase” in relation to its use in the second sentence of the Product Margin definition.

[12] The average margin for each department is to include any costs incurred in the “purchase”. Farmers say that such costs include, for example, shipping, storage and insurance. I understand Mr Wiegerinck to be saying that the cost of purchase should be limited to the wholesale price paid to the supplier and that all other costs are not to be included.

[13] Mr Wiegerinck’s interpretation’s does not accord with the notion that the Commission is based on the “profit” of the product, at the time of sale. In order to calculate the profit, the “purchase” referred to in the Commission Package must include the cost to the store acquiring the goods to sell rather than the wholesale amount paid to the supplier.

[14] As set out earlier in this determination it is for Mr Wiegerinck to demonstrate Framers have been incorrectly applied the wording of the Commission Package. Mr Wiegerinck has failed in this regard and I go so far as to say that Farmers have been applying the words of the Commission Package in accordance with their plain meaning.

[15] I can be of no further assistance to Mr Wiegerinck.

### **Costs**

[16] Costs are reserved. In the event that costs are sought, the parties are encouraged to resolve that question between them. Given the nature of the dispute I am inclined to let costs lie where they fall. However, if the parties fail to reach agreement on the matter of costs, Farmers Trading Company Limited may file and serve a memorandum as to costs within 28 days of the date of this determination with a right of reply by Mr Wiegerinck within 14 days of receipt. I will not consider any application outside that timeframe.

Vicki Campbell  
Member of Employment Relations Authority