

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 90/08  
5103597

BETWEEN                      JUDITH CATHERINE  
   WILLIAMS  
   Applicant

AND                              PETER BURBERY TRADING  
   AS MARTON SECURITY  
   SERVICES  
   Respondent

Member of Authority:        P R Stapp  
  
Representatives:              Applicant in Person  
   Respondent in Person  
  
Investigation Meeting:        12 June 2008 at Wanganui  
  
Determination:                27 June 2008

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     Ms Judith Williams is seeking wages and petrol expenses of \$1,690nett for the period 22 February 2003 to 3 May 2003 and wages and petrol expenses of \$3,516.03nett for the period 19 February 2004 to 20 May 2004. Her total claim is \$5, 206.03nett. Ms Williams' claim includes holiday pay and petrol claims. She has calculated her nett sums and calculated a deduction for tax. However, it is unclear that she has made allowance for some of the sums that Mr Burberry says were paid in each period, although her claim does involve some deductions.

[2]     Mr Burberry has not acknowledged that any payments are owed to Ms Williams.

**Issues**

[3] Is Ms Williams owed the sums that she has claimed? What were the payments made to her by Mr Burberry-petrol or wages?

**The Facts**

[4] Ms Williams was employed by Peter Burberry trading as Marton Security Services. She was employed as a security officer to work from 9.00pm until 1.00am daily and call-outs. Mr Burberry did not provide Ms Williams with an employment agreement. There are some time records produced by Mr Burberry, but he could not produce any proper wage time and holiday records.

[5] It is common ground that Ms Williams' hourly rate was \$10 per hour during both periods of her claim and \$10 for each call-out. She was paid on various occasions in cash. She says the sums that Mr Burberry paid her were for petrol expenses. He denied this and says the sums were for wages and that she did not work all the hours claimed when she would have been at home on call "waiting for the phone". Also, he says she had the use of his diesel vehicle. He supported his claim with two ATM payment slips for cash, which referred to the payment of wages. However, both ATM slips were for days outside Ms Williams' claims.

[6] There has been a time sheet produced for 144.50 hours worked in February 2003. Ms Williams received payments of \$100 on 19 March 2003, \$100 on 21 March 2003, \$150 on 28 March 2003 and \$250 on 31 March 2003.

[7] There is one payment of \$200 made on 15 April 2003 recorded, but no other record of any payments for the months of April and May 2003. The total paid in the period of the first claim-22 February 2003 to 3 May 2003-was \$800. Ms Williams has included four Taihape call-outs and has relied on her diaries for the hours worked and call-outs.

[8] There is a record of \$240 being paid on 20 April 2004, but it is unclear what the payment was for. There were various other cash payments made in 2004 but the sums are not relevant to the period of the second claim for wages-19 February 2004 to 20 May 2004-because they fall outside the claim.

[9] Ms Williams has recorded her hours as 184 for the first period of her claim supported by her diaries and an excel spread sheet of the details. She has claimed 260 hours and 110 call outs for the second period

### **Determination**

[10] The matter has not been assisted by Mr Burbery's inadequate record keeping and discrepancies. He was in breach of the Employment Relations Act for failing to provide an intended employment agreement when he engaged Ms Williams to work. He had no employment agreement in writing for Ms Williams. Furthermore he has been in breach of the Act for failing to provide wage and time and holiday records when requested.

[11] Ms Williams has not produced satisfactory evidence that the sums paid by Mr Burbery are for the reimbursement of petrol and cell phone expenses in the absence of receipts and any invoices and bank statements that reasonably should have been produced. In addition, although I accept that she has done her best to recreate what she is owed from her diaries I am not satisfied that her information adequately reflects the parties' arrangement on the payment of wages, petrol and the cell phone and call out arrangements. Therefore, I have accepted that the payments she received were for wages in the absence of any details, and I have deducted these from her two claims.

### **Orders of the Authority**

[12] Peter Burbery owes Judith Williams \$809nett for the period 22 February 2003 to 3 May 2003. Mr Burbery also owes her \$3,276.03nett for the period 19 February 2004 to 20 May 2004.

[13] It is my decision that Peter Burbery is to pay Judith Williams a total of \$4,085.03nett. Mr Burbery will have to calculate tax in addition to these sums.

[14] Also, Peter Burbery is to pay Judith Williams the filing fee of \$70.