

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2023] NZERA 729
3167343

BETWEEN

GILLIAN WRIGHT
Applicant

AND

JOHN LOUIS DIEHL
Respondent

Member of Authority: Philip Cheyne

Representatives: Keith Wright for the Applicant
Respondent in person

Submissions Received: 15 November 2023 from the Applicant
16 November 2023 from the Respondent

Date of Determination: 6 December 2023

SECOND DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] In an earlier determination I reserved leave for Mr Diehl to provide calculations of final holiday pay, based on the findings set out. Mrs Wright would be able to respond to those calculations.¹

¹ *Wright v Diehl* [2023] NZERA 613.

[2] I have received comment from Mr Diehl and for Mrs Wright. This determination resolves the issue of final holiday pay.

[3] In those exchanges, Mrs Wright raised a point about the investigation meeting fees. However, the claim against Mr Diehl for costs was considered as part of the investigation meeting and the submissions that followed, so was dealt with in the earlier determination. It is not appropriate to reconsider the costs order that was made.

Quantification of final holiday pay

[4] I found that Mr Diehl owed Mrs Wright final holiday pay of \$3,446.92 under s 25 of the Holidays Act 2003 for final holiday pay (\$2,867.32) together with holiday pay at 8% on other arrears (\$579.60).

[5] I found that Mr Diehl had granted and paid Mrs Wright some annual holidays in advance so he was entitled to deduct the amount paid to Mrs Wright in advance against the final holiday pay, in accordance with s 25(2)(a) of the Holidays Act 2003. Leave was reserved for Mr Diehl to provide calculations, followed by Mrs Wright's response.

[6] Mr Diehl says he does not have "the knowledge" and his and his accountant's figures have already been rejected. Mrs Wright says that it is impossible to comment, without Mr Diehl's calculations.

[7] Mr Diehl's figures were not "rejected", but I did not accept that as the employer Mr Diehl could unilaterally pay out rather than accumulate Mrs Wright entitlement to alternative holidays when she worked on public holidays.

[8] In the earlier determination, I found that Mrs Wright had taken and been paid for 23 days annual leave. Mrs Wright did not always work five days per week and one of her shifts was generally less than 8 hours. Mrs Wright's employment lasted more than a year but less than two years. While 23 days annual leave would have exceeded the statutory entitlement of four weeks' annual leave, I am not in a position to precisely calculate the amount paid for

holidays in advance. Despite Mr Diehl's lack of calculations, the matter should be resolved now without further delay.

[9] Taking the annual leave payment for 32 hours in the pay period ending 15 August 2021 would approximate the amount paid for holidays taken in advance, having regard to Mrs Wright's ordinary days and hours of work. Gross of \$943.23 was paid. I treat that sum as the amount paid by Mr Diehl for holidays taken in advance.

[10] The balance of \$2,503.69 is due to Mrs Wright as holiday pay in accordance with s 25 of the Holidays Act 2003.

Order

[11] John Louis Diehl is to pay Gillian Wright \$2,503.69 (gross) immediately.

Philip Cheyne
Member of the Employment Relations Authority