

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Sue Wright (Applicant)
AND Te Tuinga Whanau Trust (Respondent)
REPRESENTATIVES David Bruce, Advocate for Applicant
Atiria Armstrong, Advocate for Respondent
MEMBER OF AUTHORITY Janet Scott
INVESTIGATION MEETING 16 December 2004
17 December 2004
DATE OF DETERMINATION 28 July 2005

SUPPLEMENTARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

On 4 April 2004 I issued a Determination in the above matter. I found that the applicant was unjustifiably disadvantaged in her employment and unjustifiably dismissed.

In addressing remedies and the matter of reimbursement for lost remuneration I directed the respondent to pay to Ms Wright lost compensation (remuneration) from 5 March 2004 until she obtained new employment on 26 July 2004. I also directed that the respondent was permitted to deduct from the gross sum payable the two weeks notice it paid to Ms Wright on termination and a sum equivalent to the gross earnings earned by her over the period 5 March - 25 July.

The parties were directed to advise me if they could not agree on the sum payable to allow the matter to be determined by me. The parties have not been able to agree on the amount to be paid to Ms Wright as lost remuneration. I have received submissions from the parties and will now determine the matter. In doing so, I have quantified and recorded the total of the arrears, lost remuneration, compensation and costs to be paid by the respondent to the applicant in this matter.

Submissions and Discussion

The applicant earned \$562.50 gross per week in her position with the Trust.

Unbeknownst to me the applicant had a secondary job at Pinto over the period of her employment with TTWT. In that job she earned an average of \$314.06 per week. After her dismissal she

increased the hours she worked for Pinto and between 19 March and 31 July 2004 she earned an average of \$447.69 gross per week an increase of \$133.63 per week¹.

The respondent in this matter has (unsurprisingly) taken literally my direction that it is permitted to deduct from the gross remuneration lost by Ms Wright for the period 5 March - 25 July 2005 the total of her earnings from her employment with Pinto.

The representative for the applicant submits the respondent is entitled only to deduct from the lost remuneration that would otherwise be awarded to Ms Wright the amount of the additional earnings earned by Ms Wright at her job with Pinto over the relevant period.

The principle governing the award of lost remuneration is that Ms Wright should be restored (up to the time she obtained new employment) to the position she would have been in but for the unjustifiable dismissal.

In awarding lost remuneration in accordance with this principle, Ms Wright must receive such an award that puts her (for the relevant period) into the exact position she was in prior to her dismissal. The employer is entitled to recognition of the notice it paid Ms Wright and may deduct from the award payable any earnings received by her over the period 19 March² - 25 July 2004 that were *additional* to the secondary employment earnings received by her prior to her dismissal. In directing that the respondent could deduct *total* earnings received by Ms Wright in the period 5 March - 25 July I was unaware that Ms Wright had secondary employment from which she received earnings independent of the earnings she received from TTWT.

Determination

Arrears of wages payable

The Trust is directed to pay to Ms Wright the sum of \$787.50 gross as arrears of wages for Anniversary Day 2004, 28 January 2004 and a week Ms Wright was suspended from her employment. PAYE is payable on this sum.

Lost Remuneration³

The respondent is directed to pay to the applicant the sum of \$7,719.66 gross to the applicant to reimburse her for the remuneration lost by her as a result of the dismissal. PAYE is payable on this sum.

Compensation under s.123 (c) (i) for hurt and humiliation

The respondent is directed to pay to the applicant the sum of \$10,000 net under this head.

Costs

The parties have agreed that the respondent will pay costs in the sum of \$2, 812.50. That agreement is recorded and payment in that sum ordered.

¹ Information provided by Pinto.

² After the paid notice period.

³ The calculation of lost remuneration submitted by Mr Bruce to the respondent and the Authority is wrong and I have calculated it correctly. The correct calculation is attached to this determination.

Recommended Payment Schedule

The respondent has expressed a wish to pay the total sum payable over time.

I do not have the power to direct payment over time but recommend the award be paid to the applicant in four equal sums with the first sum being paid on 1 August 2005 with the remaining sums payable on the first day of the months of September, October and November 2005.

The cost award (\$2,812.50) should be paid with the first monthly payment and in addition to it.

Note. I have not included a schedule of the actual monthly sums to be paid in accordance with this recommendation because PAYE is payable on the arrears and lost remuneration awarded. The amount will be readily calculated once PAYE is deducted from the sums in question.

If the parties do not agree to this recommendation or an alternative arrangement acceptable to both parties the total sum payable is to be paid to Ms Wright forthwith.

Janet Scott
Member of Employment Relations Authority

AEA 804/04
Sue Wright and Te Tuinga Whanau Trust

Calculation of Lost Remuneration Payable

\$	
11,250.00	Lost remuneration @ \$562.50 per week for 20 weeks (March 5 2004 – 26 July 2004).
-1,125.00	Less 2 weeks notice paid
<u>10,125.00</u>	
-2,405.34	Less additional earning earned for 18 weeks in Pinto employment (\$447.69 - \$314.06 = 133.63 x 18 weeks = \$2,405.35).
<u>\$7,719.66</u>	Lost remuneration payable