

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 355/07
5092880

BETWEEN HONG (JOHN) ZHAO
Applicant

AND SPLURF LIMITED
Respondent

Member of Authority: Robin Arthur

Representatives: Applicant in person
 No appearance for Respondent

Investigation Meeting: 14 November 2007 at Auckland

Determination: 14 November 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant resigned from his job as a programmer for the Respondent on 29 March 2007. He seeks an order for payment of two weeks' wages and unpaid annual leave due to him on his last day of work, 18 April 2007.

[2] The Respondent has not replied to the Applicant's claim in the Authority. Notices of Investigation Meeting were sent to the Respondent's registered office and present business office address. An Authority Support Officer has independently confirmed that business address, which is the same as that given by the Respondent's director Nigel Lewis in recent changes to the particulars of shareholding registered at the Companies Office. The Support Officer has also contacted Patrick McPhee, a shareholder of the Respondent, by telephone at that address. Mr McPhee referred queries to Mr Lewis who has not returned messages left on his landline and mobile telephone numbers.

[3] I am satisfied that sufficient endeavours have been made to allow the Respondent to refute the Applicant's claim if it wished to do so. However, on the Applicant's affirmed and unchallenged evidence, it is clear that the Respondent does not dispute the money is owed. The Applicant has produced copies of text messages from Mr McPhee on three occasions in April and May advising that the money will be paid.

[4] The Respondent has breached its obligations under the Applicant's employment agreement and the Holidays Act 2003 to pay wages and annual leave owed to the Applicant. He is entitled to an order for those amounts to be paid immediately.

[5] The Applicant worked for the Respondent from 24 July 2006 to 18 April 2007 and says he took no annual leave in that period. Under s23 of the Holidays Act 2003, on the calculation of annual holiday pay where employment ends within 12 months, the Applicant is entitled to be paid six per cent of his gross earnings for that period as annual holiday pay.

Order for payment of wages and annual leave

[6] The Respondent is ordered to pay to the Applicant, within 14 days of the date of this determination:

- (i) the sum of \$1538.46 for two weeks wages, and
- (ii) six per cent of his gross earnings since the commencement of his employment.

Robin Arthur
Member of the Employment Relations Authority