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de Haas v Site Works [2011] NZERA 347; [2011] NZERA Auckland 235 (2 June 2011)

Last Updated: 22 June 2011

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2011] NZERA Auckland 235 5306442

BETWEEN SHARON DAWN DE HAAS

Applicant

AND SITE WORKS

Respondent

Member of Authority: K J Anderson

Representatives: S de Haas, In Person

N Barnett, Advocate for Respondent

Investigation: On the papers

Determination: 2 June 2011

DETERMINATION OF THE AUTHORITY

Payment of Holiday Pay

[1] Ms de Haas claims that she is owed holiday pay. The *Statement of Problem* received by the Authority on 28th May 2010 does not provide any details as to the sum that Ms de Haas believes that she is owed. However, following a conference call with Ms de Haas and Ms Barnett the Authority has now been provided with calculations that set out the respective positions of both parties.

1 From 1 April 2009 to 31 March 2010.

[2] The calculations provided by Ms de Haas indicate that she believes she is owed the gross sum of \$988.00. This figure is arrived at by calculating annual holiday pay at 8% of \$20,800 being a sum of \$1,664.00/ Ms de Haas also identifies that she had further gross earning of \$560.00 for the period 31st March 2010 to 8th April 2010 and 8% of this amount is \$44.80. Ms de Haas also says that she is owed statutory holiday pay for four (identified) public holidays to the total sum of \$320.00. According to the calculations of Ms de Haas, the holiday pay entitlement comes to the total sum of \$2,028.80. Ms de Haas acknowledges that she been paid \$1,040.00 and says that the sum of \$998.00 is still owed to her.

[3] Looking at the employer's circumstances, there is a rather tangled web of personal relationships and problems. The employer of Ms de Haas was a business called Site Works. The Authority is informed that the owner/operator of the business is Mr Brent Ankins. At the material times, in regard to the claims of Ms de Haas, Mr Ankins was an inmate at Waikeria Prison. From what I understand, Mrs Noelene Barnett took care of the wage records for the business. Mrs Barnett is the mother of Mr Stephen Barnett who also worked for Site Works. Ms de Haas was engaged to him. Ms de Haas called the relationship off and she says that in response, Mr Barnett informed her that all payments due to her would be "*stopped immediately*."^[1] However, it appears more probable that the employment of Ms de Haas was terminated on the ground of redundancy.

[4] Mrs Barnett has taken a businesslike and objective approach on behalf of Site Works in regard to calculating the holiday pay entitlements of Ms de Haas.^[2] Along with her calculations, Mrs Barnett has provided a written explanation. This informs that the 2009/2010 Christmas holiday break for the business commenced on (and included) 21st December 2009. Mrs Barnett

says that she asked all employees if they wished to have their holiday pay entitlements paid in a lump sum at the time of stopping work for the year, or they could have it paid over a four week period while they are on holiday. Mrs Barnett explains that this option was given to employees as some had indicated that did not wish to receive their holiday pay in a lump sum. Mrs Barnett says that Ms de Haas indicated that she wished to have her holiday pay paid over a four week period (albeit denied by Ms de Haas). The calculations provided by Mrs Barnett show that Ms de Haas received a total of \$1,600.00 (gross) for four weeks; beginning the week ending 22nd December 2009 through to the week ending 12th January 2010. The calculations show that Ms de Haas worked for 51 weeks making her gross pay at \$400 per week to be \$20,400 and 8% of this sum is \$1,632.00. Mrs Barnett submits that Ms de Haas was eventually paid a total sum of \$1,840.00 in holiday pay and that this is \$208.00 more than she is entitled to.

Determination

[5] Regrettably, upon the information available to me I am unable to uphold the claims of Ms de Haas. That is not to say that her claims are invalid or dismissed. Rather, the conflict in the evidence makes it impossible for me to determine which party is correct.

[6] I can only suggest that if Ms de Haas wants to pursue this matter further, she may wish to contact a Labour Inspector (via the Department of Labour) who may be able to utilise their more appropriate resources to assist in regard to obtaining wage and time records from Site Works and conducting interviews with appropriate parties.

K J Anderson

Member of the Employment Relations Authority

[1] There is possibly an issue relating to the legality of the termination of the employment of Ms De Haas but that is not before the Authority for determination.

[2] As I understand it, Mrs Barnett is not paid for "keeping the books" and she does this work on a voluntary basis.

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