

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 26/08
5095626

BETWEEN	JULIE LORRAINE RAINFORD Applicant
AND	CONNONS BAKERY (TAUPO) LIMITED First Respondent
AND	GRAHAM ASHLEY ROBERT PALMER Second Respondent

Member of Authority: Robin Arthur

Representatives: Applicant in person
No appearance for Respondents

Investigation Meeting: 5 December 2007 at Hamilton

Determination: 30 January 2008

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant seeks orders for the recovery of wages not paid to her at the termination of her employment with the First Respondent.

[2] Because the Applicant's statement of problem suggested that the First Respondent's director Ashley Palmer had guaranteed the Applicant she would be paid her wages, the Second Respondent was joined on the Authority's motion and the statement of problem was sent to him at residential and business addresses for reply.

[3] The Respondents did not lodge statements in reply and did not attend or have a representative attend the investigation meeting. I am satisfied from the courier

records on the Authority file that sufficient measures were taken to notify the Respondents of the claim and the Authority's investigation and to provide them with the opportunity to reply. As permitted by the Employment Relations Act 2000 ("the Act") s160, Schedule 2 clause 12 and regulation 9, I have proceeded to investigate and determine this matter.

[4] The unchallenged, affirmed evidence of the Applicant is that she is owed \$9793.93 in wages, including unpaid holiday pay, for her work for the First Respondent as manager of a Taupo bakery and café in the period from 14 October 2006 to 1 March 2007.

[5] She was not provided with a written employment agreement or proper pay slips. With the assistance of an accountant who provided services to the First Respondent, the Applicant prepared a spreadsheet identifying the hours she worked, part payments made to her and the remainder of the amounts owed to her.

[6] In the process of closing the business and removing equipment and stock from its premises, the Second Respondent told the Applicant that he would pay her wages from the proceeds of the sale of that material. At that time he also assured the Applicant that she would get paid her outstanding wages using the words: "*I guarantee you'll get paid.*"

[7] I have considered whether those words imposed an obligation of personal liability for the Applicant's wages on the Second Respondent. However on the basis of the Applicant's own evidence and the context in which those words are said to have been used, I consider that the Second Respondent used them in his capacity as a director of the First Respondent and the obligation to pay those wages remains solely with the legal entity of the First Respondent, a limited liability company which remains registered with the Companies Office at the date of this determination.

Determination

[8] I find that the Applicant is owed the sum of \$9793.93 in outstanding wages and holiday pay by the First Respondent.

[9] The First Respondent is ordered to pay the sum of \$9793.93 to the Applicant within 14 days of the date of this determination.

[10] The Applicant is also entitled to interest on the sum owed to her from 1 March 2007 to the date of this determination and from this date until the sum owed to her is paid. Under clause 11 of Schedule 2 of the Act interest is awarded at the rate of today's 90-day bill rate plus a further two percent (that is a total of 10.75%). For the period from 1 March 2007 until the date of this determination, the sum of \$961.92 interest is due. From the day after the date of this determination until the date that the wages due are paid, interest shall continue to accrue at the rate of \$2.88 a day.

[11] The Applicant is also entitled to reimbursement by the First Respondent of her application fee of \$70.

[12] A certificate of determination is to be issued with this determination confirming that the First Respondent is to pay to the Applicant the following sums:

- (i) \$9793.93 in outstanding wages and holiday pay; and
- (ii) \$961.92 in interest on that amount for the period from 2 March 2007 to 30 January 2008; and
- (iii) \$2.88 a day in interest from 31 January 2008 until the date of payment of the amount in item (i) above; and
- (iv) \$70.00 in reimbursement of her application fee in the Authority.

Robin Arthur
Member of the Employment Relations Authority