

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 112/08
5106044

BETWEEN CHRISTINE COLLIER
 Applicant

AND BEYOND 2000
 INVESTMENTS LTD T/A
 STAG PARK DINER
 Respondent

Member of Authority: Dzintra King

Representatives: Applicant In Person
 Gavin Bailey, Advocate for Respondent

Investigation Meeting: 13 March 2008 at Taupo

Determination: 27 March 2008

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Ms Christine Collier, was employed as a cook at the Stag Park Diner. Ms Collier says that when her employment ceased she was owed payment for annual leave.

[2] Mr Bailey, a director of Beyond 2000 Investments Ltd t/a the Stag Park Diner, conceded in his Statement in Reply that he owed holiday pay to Ms Collier.

[3] At the hearing the sole issue for determination was the amount owed. Ms Collier said the records showed only the annual leave that had been accumulated up until 20 November 2006. That was 49.47 hours. She indicated that the payroll Supervisor had told her that leave since that date did not show on the company's records.

[4] I contacted Ms Kerins, the Payroll Supervisor, who stated that the records only showed leave until 20 November 2006.

[5] Ms Collier is owed the leave showing on the records and her accumulated leave since 20 November 2006 until her termination on 22 October 2006. Mr Bailey told me the company was sold on 26 October 2006.

[6] The MYOB records show that Ms Collier was earned \$20,016.27 for the tax year being 1 April 2007 until her termination. Her holiday year earnings were \$34,457.52.

[7] Ms Collier is owed annual leave at the rate of 6% for the period 20 November 2006 to 31 March 2007. On 1 April 2008 annual leave is owed at the rate of 8%.

[8] From 2 November 2006 until 31 March 2007 Ms Collier earned \$14,441.25. The amount owing for that period is \$866.475.

[9] From 1 April 2007 until her termination Ms Collier earned \$20,016.27. The amount owing for that period is \$1,601.30.

[10] Ms Collier was paid \$15 per hour so the 49.47 hours owed totals \$742.05.

[11] The total amount of annual holiday pay owed is \$3,209.83.

[12] Relationships between the parties do not appear to have been satisfactory prior to the termination of employment. At the time of termination Ms Collier was on sick leave.

[13] During the hearing Mr Bailey asserted that he did not owe any holiday pay because there was a clause in the employment agreement requiring the employee to pay two weeks' salary if no notice was given. That was the first indication given of the existence of such a clause. The agreement was not provided.

[14] For the purposes of the holiday pay claim whether or not there was a contract and such a clause is irrelevant as s.6 Holidays Act 2003 provides that while agreement may be reached providing additional or enhanced entitlements, restricting or reducing an employee's entitlements under the Act is not permissible. Any contractual exclusion, reduction or restriction has no effect.

[15] The respondent is to pay the applicant the sum of \$3, 209.83. I also order the respondent to pay the applicant interest on the unpaid amount at the rate of 11%, the interest to run from 22 October 2007 until such time as the amount owing is paid in full.

Bad faith

[16] During the course of the hearing Mr Bailey insulted the applicant and her support person, told me to "shut up" and "fuck up", refused to leave the hearing when instructed to do so, necessitating my seeking the assistance of the hotel, who in turn

sought the assistance of the police. Mr Bailey's behaviour was such that he interrupted and obstructed the conduct of the hearing.

COSTS

[17] Ms Collier was not legally represented so has incurred no costs. She is, however, entitled to recover her filing fee of \$70. The respondent is to pay that amount to the applicant in addition to the \$3,209.83.

Dzintra King

Member of the Employment Relations Authority