

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**AA 236/08
5123314**

BETWEEN BRAND DEVELOPERS LIMITED T/A TV
 SHOP
 Applicant

AND TUITUI SULA
 Respondent

Member of Authority: Leon Robinson

Representatives: Keith McConnell for Applicant
 Respondent In Person

Investigation Meeting: 24 June 2008

Further Information: 24 June 2008
 27 June 2008

Determination: 7 July 2008

DETERMINATION OF THE AUTHORITY

The problem

[1] The applicant Brand Developers Limited t/a TV Shop ("TV Shop") applies to the Authority for an investigation of an overpayment made in error to its former employee Ms Tuitui Sula ("Ms Sula"). TV Shop asks the Authority to resolve the problem by ordering Ms Sula to repay it \$8,000.00.

[2] TV Shop's application lodged in the Authority on 5 May 2008 was served on Ms Sula on 6 May 2008. Ms Sula did not lodge a statement in reply and as a result the application is not defended. She was not entitled to defend the matter without leave. She took no steps in the matter. By Minute of 28 May 2008 I set the application down for investigation meeting on 24 June 2008. I am satisfied that the Minute and a Notice of Investigation Meeting were served personally on Ms Sula.

[3] Ms Sula did not attend the investigation meeting, whether to seek leave or otherwise. I telephoned Ms Sula at about 10.10am during the investigation meeting. Ms Sula confirmed she was aware of the scheduled investigation meeting but would not be attending. She explained she had been unwell in the early stages of her pregnancy and I understood that to be an explanation for her failure to take steps. I arranged to hear from her by telephone and that accommodation proceeded upon my grant of leave to her, unopposed, to defend the matter.

[4] In the circumstances, I did not consider mediation would contribute constructively to the resolution of the matter.

The facts

[5] I took evidence from TV Shop's sales director Mr Ray Vickers ("Mr Vickers") and heard from Ms Sula by telephone.

[6] Ms Sula was employed by TV Shop on a casual basis at its Rosebank Road, Avondale showroom as its supervisor/coordinator. Ms Sula was paid \$22.00 per hour and worked full time.

[7] On the evening of 26 March 2008 TV Shop's payroll officer direct credited an amount of \$11,637.37 in error to Ms Sula's bank account.

[8] I find that at about 2.00am on the morning of 27 March 2008 Ms Sula, who also had other evening employment, transferred by telephone banking an amount of \$8,000.00 to her sister's bank account in Australia. Ms Sula's sister is resident in Australia and Ms Sula rents her sister's property in Waitakere City. Ms Sula maintained she too made an error pressing one too many zeros and meant only to pay her rent of \$800.00 to her sister's Australian mortgage account.

[9] TV Shop then made request of Ms Sula to retrieve the funds from her sister's Australian bank account. Ms Sula took steps accordingly but the funds were not recovered. Ms Sula did repay to her employer the sum of \$3,610.87.

[10] Ms Sula signed this letter dated 31 March 2008:-

To Whom It May Concern,

I Tui Sula, agree to pay \$50.00 per fortnight towards the overpayment of my wages dated 26 March 2008 from Brand Developers, trading as TV SHOP. Because I am leaving on the 11th of April, this is the most I will be able to afford due to not having a full time job. An automatic payment will be arranged to begin from my bank account on the 4th of April 2008 until further notice. If you have any queries, please feel free to let me know.

Regards

[signed]

Tui Sula

[11] Ms Sula took exception to her employer's continued efforts to have her retrieve the funds from her sister's Australian bank. On 3 April 2008 she wrote to her employer and advised her sister was taking steps to restructure her finances with a view to providing Ms Sula with funds to reimburse her employer. She advised TV Shop she would inform it of the outcome of her sister's actions but in the meantime, she would "hold off on the arrangement that [she] had agreed to be deducted from [her] bank account per fortnight".

[12] Ms Sula did not attend work in the week beginning 7 April 2008 because she was unwell. Mr Vickers wrote to her by letter of 7 April 2008 seeking a formal meeting to discuss arrangements for the repayment of the overpayment.

[13] Ms Sula did not return to the employment. She has not repaid TV Shop the overpayment to her of \$8,000.00.

The merits

[14] Ms Sula does not deny she is indebted to TV Shop for the overpayment made to her in error of \$8,000.00. I am satisfied that an overpayment was made, that it was made in error and further, that Ms Sula is indebted to TV Shop.

The determination

[15] **I determine that Tuitui Sula is indebted to Brand Developers Limited t/a**

TV Shop in the sum of \$8,000.00¹ and Ms Sula must repay that sum to Brand Developers Limited t/a TV Shop.

[16] I record that I did not permit a claim for interest notified at the investigation meeting because Ms Sula has not been notified of that further remedy. If TV Shop desires to pursue that additional remedy, it may do so by way of further application.

[17] Any Certificate of Determination issued in respect of this Determination is to be immediately served on Ms Sula.

Costs

[18] In the event that costs are sought, I invite the parties to resolve the matter between them, but failing agreement, Mr McConnell is to lodge and serve a memorandum as to costs within 14 days of the date of this Determination. Ms Sula is to lodge and serve a memorandum in reply thereafter but within 28 days of the date of this Determination. I will not consider any application outside that timeframe without leave.

Leon Robinson
Member of Employment Relations Authority

¹ This is a "judgment sum", at least for the purposes of clause 11 Schedule 2 *Employment Relations Act 2000*.