

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 367/09  
5276620

BETWEEN

MARK BRAMWELL,  
PATRICIA SAKAGAMI  
Applicants

AND

CAFÉ FRESH LIMITED  
Respondent

TESSA HANCOX, DELROY  
MORGAN, LAURA CERVIN,  
MANE ABRAHAM  
Applicants

AND

BOX'N'FIT LIMITED  
Respondent

Member of Authority: R A Monaghan

Representatives: M Bramwell, advocate for applicants  
No appearance for respondents

Investigation Meeting: 14 October 2009

Determination: 14 October 2009

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Mark Bramwell and Patricia Sakagama say their former employer, Café Fresh Limited, owes them unpaid wages and holiday pay.

[2] Tessa Hancox, Delroy Morgan, Laura Cervin and Mane Abraham say their former employer Box'Fit Limited owes them unpaid wages and holiday pay.

[3] At relevant times Café Fresh Limited and Box'n'Fit Limited had the same directors and shareholders. The former operated a café in a gym operated by the

latter. The payments being sought are payments outstanding at the time the businesses closed.

### **Preliminary matters**

[4] The respondents did not appear and were not represented at the investigation meeting. At 8.20 am on the morning of the meeting one of the directors and shareholders, Tui Harwood, advised that she would not be attending the meeting but provided a list of the payments owed according to her accounts person's calculations.

[5] I am satisfied that the respondents had notice both of the claims against them and of the date of the meeting. No reason was given for the failure to attend, so I have proceeded under clause 12 Schedule 2 of the Employment Relations Act 2000 to act as fully as if they had attended and been represented.

[6] Two of the applicants, Patricia Sakagama and Tessa Hancox, also did not attend because of their absence overseas. Their applications were adjourned pending their return. However the receipt of calculations from Ms Harwood means I have reviewed their applications and addressed them as set out in this determination.

[7] For the general information of the parties the investigation meeting is a form of legal proceeding conducted for the purpose of gathering and hearing evidence. The Authority reaches its conclusions and makes any orders based on that evidence. The failure of a party or a witness to attend means, in the absence of a suitable alternative arrangement, that the person's evidence is not heard. Any informal statement the person may have made, or any information discussed in exchanges with the Authority's support officers, is not evidence.

### **Determination**

[8] Although the calculations Ms Harwood provided are not evidence, they provided a basis for discussion between the Authority and the applicants who attended the investigation meeting. Because the applicants attended and gave evidence, while Ms Harwood did not, I have accepted their calculations where they differ from Ms

Harwood's. I record that Mark Bramwell and Mane Abraham accepted the calculations relating to them.

[9] As a result I make the following orders:

- (a) Café Fresh Limited is to pay Mark Bramwell the sum of \$5,011.61 (nett);
- (b) Box'n'Fit Limited is to pay to Mane Abraham the sum of \$2,144.27 (nett);
- (c) Box'n'Fit Limited is to pay to Laura Cervin the sum of \$341 (nett);
- (d) Box'n'Fit Limited is to pay to Delroy Morgan the sum of \$2,335.46 (nett);

[10] Ms Cervin disputed the year to date figure used to calculate her holiday pay, and produced bank statements in support. There was also a minor difference between the amount sought and the amount calculated in respect of payment in lieu of notice.

[11] Mr Morgan disagreed that 3.5 days' leave was taken over the Christmas period.

[12] The following further orders are made subject to confirmation from Patricia Sakagama and Tessa Hancox that the calculations are accepted:

- (a) Café Fresh Limited is to pay to Patricia Sakagama \$824.01 (nett) being one week's pay in lieu of notice and holiday pay calculated at 8% of the year to date earnings;
- (b) Box'n'Fit Limited is to pay to Tessa Hancox \$1,563.16 (nett) being one week's pay in lieu of notice, holiday pay calculated at 8% of the year to date earnings, and payment for two days worked and not paid for.

[13] The confirmation is to be conveyed to the Authority, which will advise Ms Harwood on receipt. If no confirmation is received in the Authority by the close of business on Friday 16 October 2009 (NZ time) these further orders will lapse and the

applications will remain adjourned. If the Authority is advised the calculations are not accepted, the applications will remain adjourned.

**Costs**

[14] Either one of the respondents, or both between them, is ordered to reimburse the applicants for the Authority's filing fee of \$70.

R A Monaghan

Member of the Employment Relations Authority