

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2012] NZERA Auckland 148
5369597**

BETWEEN RANGI TE ANINI
Applicant

AND MILLS ROAD FREIGHT
LIMITED/ FREIGHT PLUS
LIMITED
Respondent

Member of Authority: Eleanor Robinson

Representatives: Applicant in person
Carl Mills for Respondent

Investigation Meeting: 10 and 30 April 2012 at Auckland

Determination: 01 May 2012

CONSENT DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Mr Rangi Te Anini, claims that the Respondent, Mills Road Freight Limited ("MRF), owes him \$4,700.00 gross in respect of 20 days of unpaid statutory annual leave entitlement, in addition to \$2,467.50 gross in respect of 7 days statutory leave entitlement, these being 25 October 2010, 3 and 4 January 2011, 6 February 2011, 22 and 25 April 2011 and 6 June 2011.

[2] MRK claims that Mr Te Anini took 1 day of annual leave on 21 January 2011, and that Mr Te Anini did receive an alternative day in respect of any statutory holidays worked. MRF also disputed that Mr Te Anini worked all the statutory days which had been claimed.

Issues

[3] The issues for determination are whether:

- Mr Te Anini is owed an amount in respect of 20 days annual leave entitlement.
- Mr Te Anini is owed an amount in respect of statutory holiday entitlement.

Background Facts

[4] Mr Te Anini commenced employment with MRF in August 2010 as a truck driver based in Taupo. No written employment was provided to Mr Te Anini despite his having requested one on several occasions.

[5] Mr Te Anini said that he had worked on average for approximately 14 hours a day from the commencement of his employment with MRF; however the working days began to extend beyond the 14 hours and Mr Te Anini said that he began to look for alternative employment.

[6] On 29 August 2011 Mr Te Anini said that his employment transferred to Freight Plus Ltd (“FRL”), however no new employment agreement was provided to him.

[7] Mr Te Anini said that his workplace was changed to South Auckland but he had not been advised whether his employment had changed to a new employer or whether FPL had taken responsibility for his outstanding statutory holiday entitlements. No lump sum payment in respect of outstanding a statutory annual leave entitlement was made to Mr Te Anini by MRK.

[8] He had not received payment in respect of these at time and a half, nor had he taken alternative days as holiday or alternatively received payment.

[9] On 10 October 2011 Mr Te Anini said he had informed the operations team at FPL that he was resigning with his last day being Friday 14 October 2011. Mr Te

Anini said that on 13 October 2011 he had returned to the Auckland premises after a driving trip feeling very unwell and Mr Mills, a Director of MRF, had sent him home. The following day, 14 October 2011, Mr Te Anini said he had been too ill to work,

[10] Following the termination of his employment Mr Te Anini said that he had approached MRF for payment of his annual and statutory holiday entitlement, but had been unable to get a satisfactory response.

Determination

[11] During the course of the second Investigation Meeting it was agreed between the parties that Mr Te Anini was entitled to \$4,465.00 gross in respect of 19 days outstanding annual leave entitlement.

[12] It was further agreed between the parties that the statutory holidays worked by Mr Te Anini were 25 October 2010 and 25 April 2011. On each of these days Mr Te Anini commenced work at 10 p.m. It was agreed that Mr Te Anini had taken an alternative day in respect of each of these days, and had been paid at the standard hourly rate for the hours worked. Mr Te Anini is therefore entitled to an additional half hours payment in respect of the 4 hours worked, which should have been paid at a time and a half rate.

Remedies

[13] MRF is to pay Mr Te Anini the sum of \$4,465.00 gross in respect of 19 days outstanding annual leave entitlement.

[14] MRF is to pay Mr Te Anini the sum of \$47.00 gross in respect of outstanding statutory holiday entitlement remuneration.

[15] As interest on these amounts, MRF is to pay Mr Te Anini the sum of \$225.60 as interest pursuant to s 11, Sch 2, Employment Relations Act 2000.

[16] Mr Te Anini is to be reimbursed the filing fee of \$71.50.

Costs

[17] While costs are reserved, I note here that, subject to his submissions, Mr Te Anini represented himself and, unless he incurred legal costs, it is therefore unlikely he has grounds to claim a contribution to any fair and reasonable costs.

Eleanor Robinson
Member of the Employment Relations Authority