

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2012] NZERA Christchurch 278
5333232

BETWEEN MIRIAMA MOKOMOKO and
 TOM HARPUR
 Applicants

A N D LA FAMILIA FOUNDATION NZ
 First Respondent

A N D LA FAMILIA NUMBER 2
 LIMITED
 Second Respondent

Member of Authority: Helen Doyle

Representatives: Karina Coulston, Counsel for Applicants
 Angela Smalley, Advocate for First and Second
 Respondents

Determined on the papers

Information Received: 8 November, 8 December and 10 December 2012

Date of Determination: 18 December 2012

**DETERMINATION OF THE AUTHORITY
ON REOPENING OF INVESTIGATION**

[1] In my determination dated 6 November 2012, [2012] NZERA Christchurch 242 I found that Ms Mokokoko and Mr Harpur were unjustifiably dismissed. Relevant for current purposes I awarded each applicant one week's lost wages in the respective sums of \$961.54 gross and \$769.23 gross.

[2] After the determination was released to counsel, Ms Coulston advised by email dated 8 November 2012 that the Authority had omitted to award to each applicant one further week's lost wages claimed for the notice period and one week's unpaid wages.

[3] The Authority indicated to both parties that it was considering reopening its investigation under clause 4(1) of Schedule 2 of the Employment Relations Act 2000 about the quantum of wages awarded.

[4] Paul Brown had appeared as counsel at the investigation meeting for the first and second respondents. Mr Brown advised the support officer that he was no longer representing the respondents and that the Authority would have to deal with the respondents directly. The appropriate person representing both respondents was identified as Ms Smalley. The support officer emailed Ms Smalley and asked for a response to Ms Coulston's email about the additional wages but none was forthcoming.

[5] On 7 December 2012 the Authority issued a minute to Ms Coulston and Ms Smalley advising that it had decided to reopen its investigation on the limited basis that it would consider if two further weeks wages were owing to Ms Mokomoko and Mr Harpur. The Authority expressed in its minute that there seemed little difficulty on the face of it with the claim for lost wages from the date of dismissal being 31 January 2011 to the end of the notice period being 15 February 2011. The Authority did state in its minute that there appeared to be some confusion about what was recorded in the pay records and the claim for unpaid wages.

[6] Ms Coulston was given until 11 December 2012 to respond and Ms Smalley until 14 December 2012. The Authority advised in its minute that unless any good reason was advanced by either representative, then the Authority would proceed to determine the reopening on the papers.

[7] By the due date the Authority was provided with further information from Ms Coulston together with Ms Mokomoko's and Mr Harpur's bank records showing that there had been no wages deposited for the last week worked. There was no response received from Ms Smalley, however I am satisfied that she received the minute and therefore had an opportunity to respond because as part of the same email series pursuant to which the support officer had sent the minute Ms Smalley responded and asked for clarification about the period to challenge and appropriate form. I understand that the support officer has responded directly to Ms Smalley about that matter. There was no response from Ms Smalley about the wages issue or view as to whether the determination should be reopened.

[8] In those circumstances I now propose to deal with the reopening on the information that the Authority has before it.

Authority's power to reopen

[9] In *Heritage Expeditions Ltd v Fraser* [2010] NZEmpC35, Judge Couch considered clause 4(1) of the second schedule to the Employment Relations Act 2000. It was held in that case that the Authority had the power to reopen its investigation under that clause of its own volition. Judge Couch stated that the power conferred by clause 4(1) must be exercised judicially and in accordance with the statutory role of the Authority. It was held that this would include ensuring that all parties potentially affected by the exercise of the Authority's powers are fully and fairly informed of what is to be considered and have a proper opportunity to be heard – paras [25] and [26]. I am satisfied in this case that the respondents did have an opportunity to be heard on the question as to whether the Authority should reopen its investigation and, if so, whether there were additional weeks wages that had not been taken into account in the original determination.

Should the Authority reopen on the limited basis proposed?

[10] The two relevant paragraphs in the determination are:

Miriama Mokomoko –

[55] I have found that Ms Mokomoko resigned on 18 January 2011 from her role with her last day for her employment of 15 February 2011. Her lost wages are therefore limited to that period. Her claim for that period is one week's wages for the last week of employment in the sum of \$961.54 gross. Ms Mokomoko is entitled to reimbursement of that sum but no further amount is payable to her for lost wages.

Tom Harpur

[69] Mr Harpur resigned on 18 January with his last day of employment of 15 February 2011. His claim for this period is one week's lost wages in the sum of \$769.23 gross. He is entitled to reimbursement of that sum but no further amount is payable for lost wages.

[11] The information provided in support of the reopening, including the bank account statements of Mr Harpur and Ms Mokomoko, confirm that wages for the

week ending 23 January 2011 were paid into both Ms Mokokoko and Mr Harpur's bank accounts on 25 January 2011. Ms Mokokoko and Mr Harpur continued working for the following week ending 30 January 2011. The bank account statements confirm no payment was made to their respective bank accounts after that date. There is therefore one week's wages owing to both applicants for the last week they worked. From the date of dismissal on 31 January 2011 until 15 February 2011 there has been an award of one week's wages however that is a two week and two day period. There is therefore one week's wages and two further days wages owing to each applicant for that period.

[12] This was a case where the Authority misinterpreted the information it was provided with for the purposes of the investigation meeting about wages lost or unpaid rather than fault on the part of the applicants in providing the information. I am satisfied that a miscarriage of justice would occur if the reopening application was not granted for the limited purpose of addressing this issue for both applicants. In all the circumstances I am satisfied that I should reopen the determination about wages.

[13] Ms Mokokoko is entitled to be reimbursed for one week's unpaid wages in the sum of \$961.54 gross together with a further award of one week's wages after the date of dismissal in addition to that already awarded of \$961.54 and two further days wages for 14 and 15 February 2011 in the sum of \$384.62 gross being to the end of the notice period.

[14] Mr Harpur is entitled to be reimbursed for one week's unpaid wages in the sum of \$769.23 gross together with a further award of one week's wages after the date of dismissal in addition to that already awarded of \$769.32 and two further days wages for 14 and 15 February 2011 in the sum of \$307.73 gross being to the end of the notice period.

Determination

[15] The wages entitlement in para. 55 of determination [2012] NZERA Christchurch 242 for Ms Mokokoko is to be changed to include the additional unpaid and lost wages amounts as set out in para 13. The total amount of unpaid and lost wages including one week's wages already awarded is \$3269.24 gross. In all other respects the determination, including findings and other orders made remain the same.

[16] The wages entitlement in para. 69 of determination [2012] NZERA Christchurch 242 for Mr Harpur is to be changed to include the additional unpaid and lost wages amounts as set out in para 14. The total amount of unpaid and lost wages including one week's wages already awarded is \$2615.42 gross. In all other respects the determination, including findings and other orders made remain the same.

Helen Doyle
Member of the Employment Relations Authority