

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2014] NZERA Auckland 308  
5441464

BETWEEN                      KAREN CORIN and WENDY  
   ROHRABAUGH  
   Applicants

A N D                              BUZZ CAFÉ LIMITED  
   Respondent

Member of Authority:      T G Tetitaha

Representatives:              Applicants in person  
   No appearance by Respondent

Investigation Meeting:      15 July 2014 teleconference

Submissions received:      15, 20, 21 and 28 May 2014 from Applicants

Date of Determination:      15 July 2014

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**DETERMINATION OF THE AUTHORITY**

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- A.      There is an order pursuant to s.131 of the Act requiring Buzz Café Limited to pay Karen Corin wages arrears of \$1,730.12.**
- B.      There is an order for interest at 5% upon Karen Corin's above judgment sum calculated from 8 October 2013 until payment pursuant to clause 11, Schedule 2, Employment Relations Act 2000.**
- C.      There is an order for Buzz Café Limited pay \$35.78 to Karen Corin, being half the filing fee.**
- D.      There is an order pursuant to s.131 of the Act requiring Buzz Café Limited to pay Wendy Rohrbaugh wages arrears of \$1,913.79.**

- E. There is an order for interest at 5% upon Wendy Rohrbaugh's above judgment sum calculated from 8 October 2013 until payment pursuant to clause 11, Schedule 2, Employment Relations Act 2000.**
- F. There is an order for Buzz Café Limited to pay \$35.78 to Wendy Rohrbaugh, being half the filing fee.**

### **Employment Relationship Problem**

[1] The applicants were employed by Buzz Café Limited (the respondent) until the business closed on 8 October 2013. They seek payment of wages arrears, unpaid holiday pay at 8% of their gross wages, interest, penalties and recovery of their filing fee.

[2] Given the amounts of wages owed and the hearing venue in Taupo, I determined the most low cost and efficient way of resolving this application would be to hold an investigation meeting by telephone. An investigation meeting was set down for today and the parties were able to attend by telephone.

### **Non-appearance by Respondent**

[1] There is a preliminary issue regarding the absence of the respondent at the investigation hearing. I have the power to proceed to hear and determine this matter if, without good cause shown, a party fails to attend or be represented in a matter before it (clause 12 of Schedule 2 of the Employment Relations Act 2000. No good cause has been shown for the failure to attend.

[2] The statement of problem was served on the respondent on or about 13 March 2014. No statement in reply has been filed.

[3] By Minute dated 5 May 2014 I directed the respondent to file copies of the applicants' wage and holidays' record by 16 May 2014 at 3 pm. The parties were also advised I may proceed to determine this matter without hearing further from the respondent. A copy of the Minute was served upon the respondent at their company's address for service. The respondent failed to comply with the direction.

[4] On 19 June 2014 the support officer made enquiries by email with the respondent about a possible investigation meeting date. No response was received. This investigation meeting was set down to be heard by teleconference.

[5] On 28 June 2014 notice of today's investigation meeting to be held by teleconference was served upon the respondent director, Megan van Rijn. A further copy of the notice was served upon the company at its address for service on 30 June 2014.

[6] The support officer tried calling Ms van Rijn for today's investigation meeting. Her phone went to voicemail.

[7] In view of the above efforts to contact the respondent and its failure to file any document or attend today's investigation meeting, I am satisfied the respondent has, without good cause, failed to attend or be represented today. I shall continue to hear and determine this matter today.

#### **Issues**

[8] The following issues arise:

- a) Whether an order pursuant to s.131 of the Act should be made requiring the respondent to pay Karen Corin the sum of \$1,730.12 being wages and holiday pay? Whether interest should accrue on the above judgment sums?
- b) Whether an order pursuant to s.131 of the Act should be made requiring the respondent to pay Wendy Rohrabough the sum of \$1,913.79 being wages and holiday pay? Whether interest should accrue on the above judgment sums?
- c) Whether a penalty should be ordered against the respondent?
- d) Whether the applicant's filing fee should be recovered?

#### **Whether an order pursuant to s.131 of the Act should be made requiring the respondent to pay Ms Corin the sum of \$1,730.12 being wages and holiday pay?**

[9] Karen Corin attended by telephone. She was sworn in and confirmed under oath her submissions and evidence filed with the Authority. Ms Corin was employed from 1 April 2013 until 8 October 2013 as a cook. She produced her bank statements for the period 8 April to 8 October 2013 showing her wages paid by Buzz Cafe.

[10] She submits she was short paid on or about 27 September 2013 by \$163.45 and on or about 4 October 2013 by \$263.45. The respondent had paid her wages of \$463.45 by cheque twice. Both cheques were dishonoured. Subsequently it paid her by cash of \$300 and \$200. She further submits she was not paid \$420.00 for her final 4 days in October 2013. The total wages owed are \$846.90.

[11] She has estimated her gross wages for the period she was employed were \$11,040.22, 8% of which is \$883.22.

[12] I find the respondent's refusal to comply with my direction to produce the applicant's wage and holiday records has prejudiced the ability of Ms Corin to bring an accurate claim under s131 of the Act. I accept Ms Corin's claims of her wages and holiday pay as proved in the circumstances.

[13] There is an order pursuant to s.131 of the Act requiring Buzz Café Limited to pay Karen Corin wages arrears of \$1,730.12.

[14] This is an appropriate matter for interest to accrue from the date the wages and holiday pay became due and owing, namely the last date of Ms Corin's employment. Ms Corin has been deprived the benefit of the use of this money. Interest is an appropriate remedy to alleviate any injury as a consequence of non-payment.

[15] There is an order for interest at 5% upon Karen Corin's above judgment sum calculated from 8 October 2013 until payment pursuant to clause 11, Schedule 2, Employment Relations Act 2000.

**Whether an order pursuant to s.131 of the Act should be made requiring the respondent to pay Wendy Rohrabough the sum of \$1,913.79 being wages and holiday pay?**

[16] Wendy Rohrabough was sworn in and confirmed under oath her submissions and evidence filed with the Authority. Ms Rohrabough was employed by the respondent from 15 December 2012 until 8 October 2013 as a café assistant. She produced her pay slips and bank statements for the relevant period.

[17] She submits she was short paid on 27 September 2013 by \$130.93 and on 4 October 2013 by \$230.93. The respondent had paid her wages by cheques which were dishonoured. It subsequently paid her cash of \$300 on or about 27 September

and \$200 on or about 4 October. She further submits she was not paid \$420.00 for her final 4 days in October 2013. The total wage arrears sought are \$781.86.

[18] She has estimated based upon her bank statements that her gross wages for the period she was employed is \$19,535.69, 8% of which is \$1,562.86. She accepts she took a one week holiday and a deduction of \$430.93 is appropriate. She seeks recovery of her holiday pay owed of \$1,131.93.

[19] I find the respondent's refusal to comply with my direction to produce the applicant's wage and holiday records has prejudiced the ability of Ms Rohrabough to bring an accurate claim under s131 of the Act. I accept Ms Rohrabough's claims of her wages and holiday pay as proved in the circumstances.

[20] There is an order pursuant to s.131 of the Act requiring Buzz Café Limited to pay Wendy Rohrabough wages arrears of \$1,913.79.

[21] This is an appropriate matter for interest to accrue from date of the wages and holiday pay became due and owing, namely the last date of Ms Rohrabough's employment. Ms Rohrabough has been deprived the benefit of this money. Interest is an appropriate remedy to alleviate any injury as a consequence of non-payment.

[22] There is an order for interest at 5% upon Wendy Rohrabough's above judgment sum calculated from 8 October 2013 until payment pursuant to clause 11, Schedule 2, Employment Relations Act 2000.

**Whether a penalty should be paid by the respondent and to whom?**

[23] The applicants have not identified the statutory and evidential basis for an award of a penalty.

[24] The only conduct alleged to warrant a penalty is non-payment of wages. Any injury from the loss of the use of their wages has been met by the remedy of interest. It is inappropriate for the Authority to impose a penalty for the same conduct that has already been sufficiently remedied. The applicants accept they no longer seek any penalty in these circumstances.

[25] The application for penalties is dismissed.

**Costs**

[26] Given their success, the applicants are entitled to recover their reasonable costs including disbursements. As they were self-represented, no legal costs were incurred. They have incurred a reasonable disbursement of their filing fee of \$71.56 which it is appropriate they recover.

[27] There is an order for Buzz Café Limited pay \$35.78 to Karen Corin, being half the filing fee.

[28] There is an order for Buzz Café Limited to pay \$35.78 to Wendy Rohrabough, being half the filing fee.

**T G Tetitaha**  
**Member of the Employment Relations Authority**