

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2015] NZERA Christchurch 13  
5433857

BETWEEN SOUTH OTAGO HIGH  
SCHOOL BOARD OF  
TRUSTEES  
Applicant

A N D JOHN AND STEVEN NICOL  
Respondents

Member of Authority: David Appleton

Representatives: Rachel Brazil, Counsel for Applicant  
John Nicol for himself and for Steven Nicol

Investigation Meeting: Determined by consideration of written submissions

Submissions Received: 14 January to 3 February 2015 from Applicant  
27 January to 4 February 2015 from Respondent

Date of Determination: 4 February 2015

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Pursuant to the determination of the Authority dated 7 January 2015<sup>1</sup>, it was determined, inter alia, that the second respondent Steven Nicol had received an overpayment from the applicant, due to an error of Novopay, in the gross amount of \$2,138.21.

[2] The applicant was directed to calculate the net sum that is payable to it by Steven Nicol, and to advise Steven Nicol of the net sum in writing, showing its calculation. The applicant did this on 14 January 2015. Steven Nicol was given 14

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<sup>1</sup> [2015] NZERA Christchurch 1

days to either agree with the calculation or to challenge it. He was to set out the basis of the disagreement in writing and send it to the applicant.

[3] Steven Nicols did challenge the calculation by the agency of his father, John Nicol, who pointed out that an incorrect tax code had been used and that tax code S (instead of M) should have been used.

[4] On 2 February 2015, in answer to questions from the Authority, the applicant recalculated the tax due, based on a tax code of S. It calculated that tax of 17.5% would have been levied on the overpayment, in the sum of \$374.19, and that a further \$1.70 per \$100 would have been levied in respect of Earner's ACC Levy. This amounts to the sum of \$36.35. This amounts to a total deduction of \$410.54. Deducting this total sum from the gross overpayment of \$2,138.21 leaves the net sum of \$1,727.67.

[5] Mr John Nicol responded to this calculation by seemingly objecting to the fact that the amount had been recalculated at all, rather than to the detail of it, even though the recalculation results in a more favourable sum from Steven Nicol's point of view. John Nicol also objected to Mr Fenby, the applicant's payroll/financial manager calculating the net sum due. He also asked to view a signed document for Steven's first tax calculation signed off by the applicant and a copy of Steven's IRD 330.

[6] However, these objections and this request for information miss the point that a simple calculation needs to be done to determine what net sum is owed by Steven Nicol to the applicant. The applicant's recalculation uses the tax code that John Nicol wanted to be used and also results in the percentage used by Novopay, which John Nicol says was correct.

[7] I cannot fault the principles applied or the mathematics deployed by the applicant in its recalculation. With respect, John Nicol appears to be objecting to the recalculation because he is disenchanted with the applicant, rather than because he thinks it is incorrect. He has never presented his own calculation of the net sum owing. It is now time for the Authority to settle this matter. I therefore order as follows:

**Order**

[8] I order Mr Steven Nicol to pay to the applicant the sum of \$1,727.67. The applicant will, no doubt, approach the Inland Revenue Department about recovering the overpayment of tax that occurred because of Novopay's error.

**Costs**

[9] I reserve costs until the overpayment to Mr John Nicol has been quantified.

David Appleton  
Member of the Employment Relations Authority