



- C. Within 14 days of this determination Mr Shearer is to calculate and then pay to the IRD:**
- (i) The employer Kiwisaver contributions due for Mr Mostert for the whole period of Mr Mostert's employment;**
  - (ii) The employee Kiwisaver contributions for Mr Mostert for November and December 2015; and**
  - (iii) The student loan repayments for Mr Mostert for November and December 2015.**
- D. Mr Shearer is to pay Mr Mostert the sum of \$71.56 within 14 days of this determination.**

### **Employment relationship problem**

[1] The applicant, Timothy Mostert, claims he has not been paid holiday pay owing to him at the termination of his employment with John Shearer who trades through Shearer Fencing Ltd. He also claims that during his employment deductions were made, for student loan repayments and Kiwisaver contributions, by Mr Shearer but not all of these deductions were then paid to the Inland Revenue Department (IRD).

[2] In the statement in reply and the case management conference Mr Shearer acknowledged that holiday pay was owed to Mr Mostert. He said his company has had financial difficulties and he was unable to pay this at the time of Mr Mostert's resignation. He conceded that he needed to calculate the amount owed and then suggested he would make a proposal for payment.

### **Progress of this matter**

[3] In a case management conference on 26 May 2016, both parties agreed that they would provide information to me so that I could confirm the amounts outstanding and then Mr Shearer would make a proposal for payment.

[4] Mr Shearer's information was due to be lodged with the Authority on 20 June 2016. He failed to provide this information and has not provided any explanation for this.

[5] Mr Mostert was to respond to Mr Shearer's information by 4 July 2016. He was unable to do so.

[6] I made further directions on 5 July 2016 advising both parties that I would proceed to determine the amounts owed to Mr Mostert based on information Mr Mostert had if he lodged that information with the Authority.

[7] I directed Mr Mostert to lodge with the Authority the following information:

- a. Statement of earnings from the IRD for the financial years ending 31 March 2015 and 31 March 2016.
- b. Statement of contributions from his Kiwisaver provider for financial years ending 31 March 2015 and 31 March 2016.
- c. Statement of payments made to his student loan for financial years ending 31 March 2015 and 31 March 2016.
- d. All payslips for period of employment with Shearer Fencing Ltd.
- e. Copies of relevant bank statements showing payments received from Shearer Fencing Ltd during period of employment with Shearer Fencing Ltd.
- f. Summary of any holidays taken during period of employment with Shearer Fencing Ltd.

[8] At the time I made these directions, I believed the correct employer to be Shearer Fencing Ltd.

[9] Mr Mostert then lodged with the Authority:

- a. A statement of earnings from the IRD for the financial year ending 31 March 2016;
- b. A statement of contributions made to Mr Mostert's Kiwisaver account for the financial year ending 31 March 2016;
- c. A statement of payments made to Mr Mostert's student loan account for the financial year ending 31 March 2016;

d. Bank statements from February 2015 to January 2016.

[10] I could not make a determination on the amount of holiday pay Mr Mostert was owed until I received the following information:

- a. Mr Mostert's gross earning for February and March 2016;
- b. An account of holiday taken by, and holiday pay paid to, Mr Mostert during his employment.

[11] I then directed Mr Mostert to provide this information to the Authority so that the amount of holiday pay owed to him could be determined. Mr Mostert provided this information.

[12] The relevant documents provided by Mr Mostert were then served on Mr Shearer and Shearer Fencing Ltd.

[13] Neither Mr Shearer nor a representative for Shearer Fencing Ltd appeared at the investigation meeting. Neither party has lodged any evidence or information either in accordance with my directions or in response to Mr Mostert's documents.

[14] I am satisfied that both Mr Shearer and Shearer Fencing Ltd received all of the notices of direction, the notice of investigation meeting and the relevant documents provided by Mr Mostert.

[15] In all of the circumstances, it is safe for me to proceed without Mr Shearer or Shearer Fencing Ltd being present at the investigation meeting as I am satisfied they are both on notice of the claim being made against them, the evidence in support of the claim and that this matter was proceeding whether they appeared or not.

### **Facts**

[16] Mr Mostert was employed by Mr Shearer, not Shearer Fencing Ltd.

[17] Mr Mostert was employed from February 2015 until 16 December 2015.

[18] From February 2015 until 16 December 2015, Mr Mostert earned \$33,795.32 (gross).

[19] Mr Shearer has failed to pay employer Kiwisaver contributions for Mr Mostert for the whole period of Mr Mostert's employment and has failed to account for the employee Kiwisaver contributions for November and December 2016.

[20] Mr Shearer has failed to pay student loan repayments for November and December 2016, yet he has deducted these amounts from Mr Mostert's gross earnings.

[21] Mr Shearer has not paid Mr Mostert accrued but untaken holiday pay owing at the termination of his employment.

### **Discussion**

[22] As Mr Mostert worked less than 12 months for Mr Shearer, any holiday pay owed on termination of his employment is calculated at 8% of gross earnings less any holiday pay received.

[23] Mr Mostert accrued \$2,703.63 (gross) as holiday pay. He did not take any holidays in advance and is therefore entitled to be paid this entire amount.

[24] I cannot determine the amounts owed for student loan repayments and Kiwisaver contributions but I am satisfied that payments are due for the periods identified above. I believe Mr Shearer will have the necessary information to calculate these amounts.

### **Determination**

[25] Mr Shearer is to pay Mr Mostert \$2,703.63 (gross) for holiday pay within 14 days of this determination.

[26] I also award interest on this sum at the current rate of 5% (under the Judicature Act) from 16 December 2015 until payment is made in full.

[27] Within 14 days of this determination Mr Shearer is to calculate and then pay to the IRD:

- a. The *employer* Kiwisaver contributions due for Mr Mostert for the whole period of Mr Mostert's employment;

- b. The *employee* Kiwisaver contributions for Mr Mostert for November and December 2015.
- c. The student loan repayments for Mr Mostert for November and December 2015.

**Costs**

[1] Mr Mostert is entitled to the filing fee on the statement of problem that he has lodged with the Authority. I order that Mr Shearer pay Mr Mostert the sum of \$71.56 within 14 days of this determination.

Peter van Keulen  
Member of the Employment Relations Authority