

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2017] NZERA Wellington 64
3002071

BETWEEN

KRYSTAL ALLAN
First Applicant

CAITLYNNE HAYWARD
Second Applicant

LINKA HANSCOMBE
Third Applicant

MINAKO ITOH
Fourth Applicant

AND

SIXTA ENTERPRISES LIMITED
(t/a JUST CUTS NEW
PLYMOUTH)
First Respondent

SIXTA ANN MCKINLAY
Second Respondent

Member of Authority: Trish MacKinnon

Representatives: Lars Hansen, for Applicant
Sixta Ann McKinlay, for Respondent

Investigation Meeting: On the papers

Determination: 25 July 2017

DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY

Employment relationship problem

[1] The applicants were employees of Sixta Enterprises Limited trading as Just Cuts New Plymouth. Their employment with Sixta Enterprises Limited (SEL) ended on 20 June 2016

when SEL lost the Just Cuts franchise license. All four applicants received their last wage payments from the first respondent that day.

[2] They all remained employed by Just Cuts and commenced working for the franchisor which had taken over the business on 21 June 2016. That person advised them they needed to approach the first respondent for payment of any outstanding holiday pay owed to them. They have been seeking payment of that holiday pay since, without success. Each applicant seeks the holiday pay owing to her plus interest from 20 June 2016 to the day of payment. Their holiday pay includes payment for alternative holidays.

[3] Sixta Ann Mckinlay, sole director of SEL, acknowledges the debt owed by SEL to the four applicants. She also acknowledges liability on her own behalf as the sole director.

[4] Ms Mckinlay says neither she nor SEL has the means to pay the applicants. She attributes her inability to pay the four former employees their outstanding holiday pay to her poor health over the last four years, coupled with a number of challenging business issues.

The Authority's investigation

[5] In the course of a telephone conference with the parties on 28 April 2017, I granted leave for the applicants to join Ms Mckinlay as second respondent after hearing from Ms Mckinlay as to the financial position of SEL. I ordered Ms Mckinlay to supply wage, time and holiday records in respect of the second, third and fourth applicants by Friday, 5 May 2017. They were to be supplied to the applicants' counsel and to the Authority. SEL had already supplied records in respect of Ms Allen.

[6] I encouraged Ms Mckinlay to take advice on her situation; encouraged the parties to resolve the matter through mediation; and set down an investigation meeting, if required, to take place in New Plymouth on 27 June 2017.

[7] Ms Mckinlay has cooperated with the Authority's investigation by supplying wage and time records for the employees. In subsequent email correspondence between the Authority and the parties, Ms Mckinlay acknowledged the debt owing to the four applicants by both the first and second respondents.

[8] Ms Mckinlay maintains SEL has no assets to pay the debt. She says her involvement in the business has left her financially, mentally and physically crippled. No financial

documentation has been provided to the Authority to support her assertions. SEL remains listed on the Companies Office register with a most recently-filed financial report date of 4 April 2017.

Holiday pay owing to the applicants

[9] The total gross holiday pay, including payment for alternative holidays in respect of each applicant has been calculated by SEL's accountant or payroll provider as follows, as at 20 June 2016:

- Krystal Allan \$ 4,733.63
- Caitlynne Hayward \$10,096.04
- Linka Hanscombe \$ 2,434.07
- Minako Itoh \$ 2,419.09

[10] Ms Mckinlay has confirmed she does not dispute the calculations.

[11] The applicants have requested that interest be paid on the amounts owing to them.

[12] Schedule 2 of the Employment Relations Act 2000 provides at clause 11 that, in any matter involving the recovery of any money, the Authority may, if it thinks fit, order interest to be paid on the sum awarded. In this instance the applicants have been deprived of the enjoyment of monies due to them for more than 13 months. I find it reasonable that interest be added at the current rate of 5% calculated from the date the holiday pay became due on 20 June 2016 to the date of payment.

Determination

[13] Sixta Enterprises Limited and Sixta Ann Mckinlay are jointly and severally liable for holiday pay owing to each of the applicants. They are ordered to pay the following gross amounts, which include interest calculated to the date of this determination:

- Krystal Allan \$ 4,993.23
- Caitlynne Hayward \$10,649.73
- Linka Hanscombe \$ 2,567.56

- Minako Itoh \$ 2,551.76

[14] Interest will continue to accrue on each applicant's holiday pay entitlement at the rate of 5% per year, or 0.014% per day, until the payments are made in full.

Costs

[15] The applicants are represented by the Taranaki Community Law Trust and have made no request for costs.

Trish MacKinnon
Member of the Employment Relations Authority