

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2019] NZERA 596  
3035714

BETWEEN                      GAYLE CLEARWATER  
   Applicant  
  
AND                                B L RAYNER (1993) LIMITED  
   Respondent

Member of Authority:        Andrew Dallas  
  
Representatives:                Janet Copeland, counsel for the Applicant  
   Matthew Dearing, counsel for the Respondent  
  
Determination:                 21 October 2019

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**SECOND DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     In *Clearwater v B L Rayner (1993) Limited*<sup>1</sup> the Authority gave various remedial orders including awarding any applicable holiday pay on the amount of \$14,095.71, being reimbursement for three months lost wages.<sup>2</sup>

[2]     The matter returned to the Authority because B L Rayner (1993) Limited (Rayner) is yet to comply with these orders. Gayle Clearwater requested the Authority provide her with a Certificate of Determination for enforcement purposes. In order to issue this certificate, Ms Clearwater's holiday pay needed to be quantified.

[3]     The Authority calculated Ms Clearwater's applicable holiday pay to be \$1127.66. This sum, and the methodology giving rise to it, was put to the parties' representatives, and they agreed, on behalf of their clients, with the Authority's methodology at arriving at same.

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<sup>1</sup> [2019] NZERA 486

<sup>2</sup> Above n 1 at paragraph [55]

[4] Given this unanimity between the parties, the Authority proposed to issue a consent determination. Unfortunately, this could not be issued because Rayner, in, perhaps, a curious coincidence of timing, withdrew instructions from its representative preventing confirmation of such consent.

[5] Consequently, I reopened my investigation at my own volition under cl 4 of sch 2 of the Employment Relations Act 2000 to determine the same. On the basis of the parties agreeing with the Authority's methodology that Ms Clearwater's applicable holiday pay is \$1127.66, I now order immediate payment of \$1127.66 by Rayner to Ms Clearwater.

### **Certificate of determination**

[6] The Authority Officer is directed to prepare and issue a Certificate of Determination setting out the remedial orders made in the Authority in its substantive determination<sup>3</sup>, which have still not been complied with, the costs and disbursements orders contained in the costs determination<sup>4</sup> and the order set out in paragraph [4] above.

### **Provision of determination to Rayner's registered office**

[7] As Rayner withdrew instructions to counsel prior to completion of the current matter before the Authority, the Authority Officer is directed to provide a copy of this determination to Rayner's registered office and address for service being McIntyre Dick & Partners, 160 Spey Street, Invercargill 9810 and, if nothing else other than for completeness, its now former representative.

### **Costs**

[8] This is no order for costs arising out of this determination.

Andrew Dallas  
Chief of the Employment Relations Authority

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<sup>3</sup> Above n 2

<sup>4</sup> *Clearwater v B L Rayner (1993) Limited* [2019] NZERA 595 (Costs) at paragraph [5]