

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2019] NZERA 312
3000190
3000192
3000193

BETWEEN	GLENN HUSSEY First Applicant
A N D	ROBERT FREDRICKSEN Second Applicant
A N D	DOUG BAYLY Third Applicant
A N D	GARY AND LEE BLINKHORNE Respondents

Member of Authority:	Trish MacKinnon
Representatives:	Applicants in person Respondents in person
Investigation Meetings:	31 January and 11 April 2018 in Whanganui
Last information received:	20 April 2019
Determination:	28 May 2019

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Glenn Hussey, Robert Fredricksen, and Doug Bayly were all employed by Gary and Lee Blinkhorne ("*the Blinkhornes*" or "*the employers*") for varying periods between 2014 and 28 May 2016.

[2] Each employee believes he was underpaid in his final wage payment, and also may have been paid below the minimum wage at times during his employment. They have asked the Authority to investigate and determine their claims.

[3] The Blinkhornes vigorously denied any underpayment in written responses to the applicants' claims. In the course of the investigation meeting, however, they acknowledged there may have been issues with some aspects of their pay. The Blinkhornes said they had tried to investigate through their former payroll provider, but had been unable to clarify some of the information they had sought.

Relevant facts

[4] Messieurs Hussey, Fredricksen, and Bayly were employed by the Blinkhornes to deliver newspapers in the Whanganui area. At the time the Blinkhornes held the local area distribution contract.

[5] Each applicant was employed on a permanent part-time basis from Monday to Saturday. They worked on most public holidays, with the only exceptions being Christmas Day and Good Friday, when newspapers were not published. Each applicant signed an individual employment agreement (IEA) with the Blinkhornes and each was assigned one or more delivery areas.

[6] They were paid on a piece rate basis, depending on the number of papers delivered. There was also a fuel rate based on the number of kilometres travelled. On public holidays they were paid at one and a half times the delivery rate per newspaper in accordance with Holidays Act 2003 requirements.

[7] Payment was made by way of direct credit in arrears following the end of each completed week. The number of newspapers for delivery could vary from day to day, which resulted in the applicants' remuneration varying accordingly.

[8] When the delivery contract was taken over from the Blinkhornes by another contractor, the applicants were each given notice of the termination of their employment. None challenges the termination but each takes issue with his final pay. All applicants have some claims in common, but there are also individual differences in their circumstances which will become evident below.

The Authority's investigation

[9] The Authority held two telephone conferences and two investigation meetings which all parties attended. It was agreed on the first telephone conference that all three applications from Messrs Hussey, Fredericksen and Bayly would be heard together. While each applicant's claims will be considered separately I have issued one determination for all three claimants because of the similarity of their situations.

[10] The respondents indicated their intention to call evidence from their accountant and from their payroll provider, although that did not eventuate. Evidence was given by the three applicants and the two respondents.

[11] This determination has been issued outside the timeframe set out at s 174C (3) of the Act in circumstances the Chief of the Authority has decided, as he is permitted by s 174C (4) to do, are exceptional.

Issues

[12] The main issues for determination in respect of each applicant are:

- (a) Whether their remuneration complied with minimum wage legislation;
- (b) Whether they were paid correctly for alternative holidays; and
- (c) Whether other payments are due to them.

Relevant law

Minimum wages

[13] The Minimum Wage Act 1983 (The MWA) provides that the Governor-General may, by Order in Council, prescribe a minimum adult rate of wages payable to workers aged 16 or older who are not subject to other minimum wage provisions prescribed in other sections of that Act.

[14] Minimum Wage Orders are commonly made to take effect from 1 April annually. A small number of exceptions are provided for, none of which is applicable to the current situation. At all times the employers were obliged to ensure each applicant was paid at least the minimum wage throughout his employment.

Alternative holiday provisions

[15] Section 56 of the Holidays Act provides that an employee who works on a public holiday must be provided with an alternative holiday. Certain exceptions apply, none of which are relevant to the situations of the three applicants.

[16] Section 60(2)(b) of the Holidays Act stipulates an employee who is entitled to an alternative holiday and has not taken it before the employment ends must be paid the amount in the employee's final pay. The alternative holiday is to be paid at the rate of the employee's relevant daily pay or average daily pay for his or her last day of employment.

Glenn Hussey

[17] Mr Hussey's employment with the Blinkhornes commenced on 24 March 2014 and concluded on 28 May 2016. His IEA stated the expected arrival time of the bulk transport, which was when his actual hours of work commenced, as being 3.00 am. As all deliveries had to be completed by 6.30 am, Mr Hussey's working day was a maximum of three and a half hours. His evidence, which I accept, was that the average time for his delivery run was one and a half hours. That totals nine hours for the six day week he worked.

[18] Mr Hussey believed he was underpaid in the final pay he received from his employer and raised his concerns in writing with the Blinkhornes. The issues he queried included the payment he had received for alternative public holidays, fuel reimbursement, and minimum wage issues.

[19] He received a response from the Blinkhornes assuring him its payroll provider had correctly calculated payment of his alternative public holidays; informing him he was wrong about fuel reimbursement; and stating that minimum wage increases had been factored into his pay.

[20] After Mr Hussey expressed disagreement with the Blinkhornes' response, they responded that they had "*explained all necessary questions*" in their previous letter. They reiterated the correctness of their actions, stating they had since taken professional advice from their accountants, and would not be entering into any more correspondence with Mr Hussey.

Was Mr Hussey paid less than the minimum wage during his employment?

[21] Mr Hussey claimed his wages had fallen short of the minimum wage by \$3,028.96 over the period of his employment. I find he was paid less than the minimum wage for significant periods of his employment, but not to the extent he has claimed.

[22] When his employment commenced the relevant minimum wage was prescribed in Minimum Wage Order (No 2) 2013. The minimum rate of wages payable to an adult worker who was either paid by the hour or, as in Mr Hussey's situation, by piece work, was \$13.75 per hour.

[23] The minimum hourly rate rose to \$14.25 from 1 April 2014. Mr Hussey had only one week's employment before that date, for which he was paid \$189.44 gross, based on the delivery of 1,184 newspapers for an agreed rate of \$0.16 per newspaper. This exceeded minimum wage requirements of \$123.75 for nine hours' work per week.

[24] From 1 April 2014 the minimum weekly wage Mr Hussey was entitled to, based on nine hours' work, rose to \$128.25 gross. From the payslips he provided I have calculated that Mr Hussey's wages fell below that minimum level in 26 of his weekly pay periods between 24 August 2014 and 31 March 2015. The total amount over the 2014/2015 year by which Mr Hussey's wages fell short of the minimum wage is \$214.92.

[25] The minimum wage rose to \$14.75 per hour from 1 April 2015. There is no evidence that Mr Hussey's hours of work changed and I accept that he continued to work nine hours per week. The minimum weekly wage to which he was entitled was therefore \$132.75. From the payslips provided to me by Mr Hussey, I have calculated his wages fell short of this amount in 43 of the weeks between 1 April 2015 and 31 March 2016. The total amount by which Mr Hussey's pay fell short of the minimum wage in the 2015/2016 financial year was \$551.05 gross.

[26] From 1 April 2016 the minimum hourly wage rate rose to \$15.25. From this time the minimum wages payable to Mr Hussey, based on his nine hour working week, were \$137.25. According to the payslip information I have received from Mr Hussey, his wages exceeded the minimum wage during this period.

[27] Over the entire period of Mr Hussey's employment I find his wages fell short of the minimum wage to which he was entitled by \$765.97 gross.

[28] It was the Blinkhornes' evidence that they had paid the sum of \$568.48 as a nett payment into Mr Hussey's bank account on 9 November 2017. They referred to the payments as "*adjustments*". Mr Hussey confirmed he had received some monies at that time but said it did not accord with his calculations of what he was owed.

[29] The gross amount paid to Mr Hussey was \$668.79 which is less than the amount I have calculated he was entitled to, and I find the Blinkhornes owe Mr Hussey \$97.18 gross plus holiday pay due on that and on the adjustment amount they paid him in November 2017. Orders will be made accordingly.

Was Mr Hussey paid correctly for alternative holidays in his final pay?

[30] The short answer is that Mr Hussey was not paid correctly for such holidays. In his final pay Mr Hussey was paid \$107.98 gross as payment for alternative holidays. This was recorded as being payment for 17 alternative holidays. The calculation was made on the basis of 25.50 hours (17 days at 1.50 hours per day) at a pay rate of \$4.2346 per hour. The employers insisted this was as advised by their payroll provider and that it was correct.

[31] In their letter of 20 August 2016 to Mr Hussey in response to his query regarding the pay he had received for alternative holidays, the Blinkhornes advised him:

There is a standard rate, which in your case is **\$4.2346 per day**. This is determined in the system by dividing the total liable earnings for the previous 52 weeks by the total liable hours for that period. An Alternative Holiday should be paid the same way as sick leave, bereavement leave and public holidays. (Bolding added)

[32] The Blinkhornes did not explain why the "\$4.2346 per day" rate that they claimed was Mr Hussey's standard rate per day had been used as an hourly rate for calculating his payment for alternative holidays. Had they used the rate as a per day sum in the way they asserted was correct, Mr Hussey would have been paid at a rate of \$2.82 per hour, which would have resulted in payment of \$71.91 for 17 alternative holidays.

[33] The employers provided email correspondence they had exchanged with their payroll provider in support of their assertion as to the accuracy of the alternative holiday pay rate. I note, however, the payroll provider made very clear that its calculations were dependent:

- (a) on what was input by the Blinkhornes as the people who were managing the payroll process;
- (b) on the Blinkhornes' knowledge of the difference between average daily pay and relevant daily pay.

[34] I find the rate the employer used as an hourly rate for Mr Hussey in calculating payment for alternative public holidays in his final pay was incorrect. The Blinkhornes asserted it was a daily rate, implying generosity on their part in applying it as an hourly rate. Even when used as an hourly rate, Mr Hussey was significantly short-changed.

[35] The Blinkhornes acknowledged in the course of the investigation meeting that the payment for alternative holidays was wrong but blamed this on their payroll provider. That claim is untenable: it is the employer who has responsibility for ensuring its employees are paid correctly, not the third party payroll provider which acts on information provided to it by the employer.

[36] I note that the Blinkhornes' payment of alternative holidays at the end of Mr Hussey's employment was inconsistent with their own past practice. In the pay period ending 1 June 2014, they had paid Mr Hussey \$23.36 gross for one alternative holiday, based on delivery of 146 newspapers paid at \$0.1600 per item. They had also paid him for an alternative holiday in the pay period ending 8 Feb 2015 on the basis of the number of newspapers he had delivered on the relevant public holiday.

[37] The methodology used in those two payments was in accordance with the Holidays Act provision for payment to be made at the employee's relevant daily pay, being "*the amount of pay that the employee would have received had the employee worked on the day concerned...*"¹

[38] The employers recorded in payslips the number of newspapers the employee delivered in each pay period, and detailed the numbers delivered on public holidays. That recording allowed the employers to calculate accurately the pay due to the

¹ Section 9 (1)(a) of the Holidays Act.

employee for working on the public holiday, and the relevant daily pay for payment of the alternative holiday.

[39] The Blinkhornes did not satisfactorily explain why they had stopped using that basis of calculating pay for alternative holidays. The methodology they adopted when calculating Mr Hussey's final pay produced a result that was plainly wrong and should have been acknowledged as such by the employers at an early stage when Mr Hussey queried the payment he received.

[40] I find that, not only did the employer incorrectly calculate the payment of alternative holidays for Mr Hussey, but it paid him fewer than the number of alternative holidays to which he was entitled. I have concluded from his evidence, supported by the payslips he provided, that he worked on 20 public holidays throughout his employment. He was paid out for two alternative holidays during that time. On termination I find he was entitled to be paid for 18 alternative holidays, not the 17 that were paid by the Blinkhornes.

[41] Mr Hussey's rate per newspaper delivered was, from April 2016, \$0.2100. In accordance with the Holidays Act he was entitled to be paid for the 18 alternative holidays at the rate of his relevant daily pay or average daily pay at the date of his last day of employment.

[42] The relevant daily pay is the amount he would have received if he had worked that day, excluding the amount added by virtue of the requirement to pay for work performed on a public holiday at time one and a half.² As noted earlier, Mr Hussey's payslips recorded the number of newspapers he delivered on public holidays. As his wages were calculated on the basis of newspapers delivered, the relevant daily rate was the appropriate methodology to use.

[43] I have calculated from his payslips that Mr Hussey should have been paid \$554.19 gross for 20 alternative holidays. He was paid out \$36.37 for two alternative holidays during his employment and \$107.98 in his final pay. I find he is owed \$409.84 which will be the subject of orders made below.

[44] Additionally, I accept Mr Hussey's claim that he was entitled to be paid for the public holiday (6 June 2016) that fell within his annual holiday entitlement on the

² Sections 50(1)(a) and 9(3) of the Holidays Act.

termination of his employment.³ As he did not work on that day payment must be calculated using Mr Hussey's average daily pay.⁴ I have calculated, from his pay slips, that rate was \$21.42 gross.⁵ Orders will be made accordingly.

Was Mr Hussey paid the Travel Allowance correctly?

[45] While described in pay slips as a Travel Allowance, Mr Hussey's IEA referred to it as a fuel rate. It was a contractual term of his employment that he would receive a base rate payment of \$0.55 per kilometre he travelled in the delivery of newspapers. A variable amount was to be added to that base rate weekly "*in accordance with current fuel costs*". It is unclear whether that variable amount was ever applied.

[46] There are two aspects to Mr Hussey's claim. The first is that he was not paid the allowance on a number of occasions, which he identified from his payslips. This happened usually when he undertook extra delivery runs, as well as doing his regular run. Mr Blinkhorne acknowledged orally in the investigation meeting that that was unfair to the employee. His only justification was that it "*was just the way we did it and it was too complicated otherwise.*"

[47] I do not accept that explanation and am satisfied from my examination of the evidence that Mr Hussey is correct on each of the instances he raised. In the absence of any credible justification from his employer, I accept Mr Hussey's claim and find he is owed unpaid mileage reimbursement in the sum of \$150 for the period between the pay week ending 25 October 2015 to that ending 3 April 2016. Orders will be made accordingly.

[48] The second part of Mr Hussey's claim in relation to the travel allowance or fuel reimbursement is that the distance the employers used for his delivery run was short by two kilometres for each journey for most of his employment. When he commenced employment Mr Hussey's delivery run was 11.8 kilometres. This was changed at his request for health reasons. As far as I can ascertain from the evidence this occurred in June 2014 and from that time the allowance was based on a delivery run of six kilometres.

³ In accordance with s 40(3) of the Holidays Act.

⁴ In accordance with s 9A of the Holidays Act.

⁵ Calculated on the basis of gross wages of \$6,683.43 over the preceding 52 weeks, divided by the number of days worked, or on paid leave, in that period.

[49] Mr Hussey's evidence is that the run was eight kilometres and that he brought this to his employers' attention many times without success. The Blinkhornes, who did not disagree that Mr Hussey had made his views known on the matter, maintained that six kilometres was the correct amount as calculated by a GPS system. They provided no evidence to support this.

[50] Mr Hussey, whose evidence I prefer, provided geographical evidence to support his claim that his odometer reading for the run was consistently eight kilometres. He was paid on the basis of a six kilometre delivery run from the pay period ending 29 June 2014. I find from that date he was reimbursed weekly for 12 kilometres less than his actual mileage on his normal delivery run. Orders will be made accordingly.

Other money owing

[51] In the pay period ending 6 April 2014 Mr Hussey's payment per newspaper rate, which should have been \$0.1600 dropped to \$0.1370. I accept Mr Hussey's evidence that there was no discussion with him about this and that he had not agreed to it. The Blinkhornes provided no rationale for the decrease which resulted in Mr Hussey's wages being reduced by \$29.67 gross as evidenced in the payslip for the period. The Blinkhornes are ordered to pay that amount to Mr Hussey.

Summary of orders in respect of Mr Hussey

[52] The Blinkhornes are ordered to pay the following sums to Mr Hussey:

- (a) \$97.18 in respect of payments below minimum wage legislation requirements for the period from 24 August 2014 to 27 March 2016;⁶
- (b) \$61.28, being holiday pay in respect of the sum at (a) above and the adjustment sum already paid to him;⁷
- (c) \$409.84 gross in respect of alternative public holidays owing to him;
- (d) \$21.42 gross as payment for the public holiday of 6 June 2016 in accordance with s 40(3) of the Holidays Act;

⁶ This total takes account of the "adjustment" payment of \$668.79 gross made by the respondent to Mr Hussey on 9 November 2017.

⁷ N 7 above.

- (e) \$150.00 as a non-taxable reimbursement of fuel expenditure incurred between 25 October 2015 and 3 April 2016;
- (f) \$666.60 as a non-taxable reimbursement in respect of underpaid mileage allowance between June 2014 and May 2016; and
- (g) \$29.67 gross in respect of an underpayment of wages for the pay period ending 6 April 2014.

Robert Fredricksen

[53] Mr Fredricksen was employed from 1 April 2014 to 28 May 2016, with a break in service from 21 October 2015 to 12 December 2015 for health reasons. He was paid out all leave owing at that time. Mr Fredricksen was concerned about his final pay and raised a query in writing with his employer on 12 August 2016 over the accuracy of the payments made to him.

[54] His particular concern at that point related to the payments he had received for alternative holidays. He subsequently also claimed additional travel allowances and queried whether he was paid below the minimum wage during his employment. Mr Fredricksen's query received a similar response from the Blinkhornes to that Mr Hussey had received.

Was Mr Fredricksen paid correctly for alternative holidays?

[55] Mr Fredricksen worked on six public holidays between resuming his employment in December 2015 and the termination of that employment on 28 May 2016. He was accordingly entitled to payment for six alternative holidays. His final pay included payment of \$72.26 gross for those alternative holidays, and was based on a daily rate of \$3.011. The respondent treated the daily rate as an hourly rate for this purpose and paid him for 24 hours at that rate, or four hours work per day.

[56] Mr Fredricksen says the payment he received for the six alternative holidays was clearly inaccurate. As in Mr Hussey's case, I agree. I note that it was also inconsistent with the employers' past practice, again as occurred with Mr Hussey. Mr Fredricksen provided a payslip for the pay period ending 10 August 2014, which records that he was paid for one alternative holiday that he took on 9 August 2014. His payment for that day was recorded in the payslip as \$75.10 gross. This was based

on payment of 252 newspapers he delivered at a rate of \$0.1658 per paper and 175 newspapers at a rate of \$0.1904 per paper.

[57] Mr Fredricksen had two delivery runs, 11 and 18. His payslip for 2 November 2014 records run 11 had a payment per newspaper rate at the time of \$0.1658, and for run 18 the rate was \$0.1904. The 2 November 2014 payslip also records that Mr Fredricksen had a day's sick leave on 28 October 2014 for which he was paid \$71.03. The payslip referred to:

247.00 Sick Leave (28 Oct 2014 -28 Oct 2014) 0.5 days @ \$0.1658
158.00 Sick Leave (28 Oct 2014 - 28 Oct 2014) 0.5 days @ \$0.1904.

[58] In the absence of any explanation as to why the numbers at the beginning of each line were used, I assume they were the actual number of newspapers delivered by the substitute delivery person or persons on the day for which Mr Fredricksen was paid sick leave. I note the numbers are very similar to the numbers of newspapers he delivered on Labour Day on each of his runs.

[59] It appears the Blinkhornes paid Mr Fredricksen sick leave for 28 October 2014 at his relevant daily rate, being "*the amount of pay that the employee would have received had the employee worked on the day concerned...*".⁸ This was in accordance with the Holidays Act which provides for relevant daily pay to be used, unless the context otherwise requires, for the purposes of calculating payment for a public holiday, an alternative holiday, sick leave or bereavement leave.⁹

[60] Mr Fredricksen should have been paid for the six alternative holidays at either his relevant daily rate or his average daily earnings. Mr Fredricksen does not have all his payslips. He said he had difficulty accessing the payslips online during his employment and his employer provided only summaries which did not enable him to calculate his entitlements correctly. The payslips he had covered only two of the six public holidays for which he was entitled to alternative days.

[61] Section 132 of the Act provides for situations where an employee brings an arrears of wages claim before the Authority and provides evidence that the employer has failed to keep or produce a wages and time record in respect of that employee. Where the employee's ability to bring an accurate claim for arrears has been

⁸ N1.

⁹ Section 9(1) Holidays Act.

prejudiced by the employer's failure, the Authority may accept as proved all claims made by the employee unless the employer proves them to be incorrect.

[62] That situation is applicable to Mr Fredricksen's circumstances. Applying s 132 of the Act I accept his calculation that he was entitled to payment of \$518.45 in respect of the six alternative holidays. Orders will be made for that amount less the \$72.26 he was paid on termination of employment.

Minimum wages

[63] When Mr Fredricksen lodged his application in the Authority he queried whether his pay had dropped below the minimum wage at any stage during his employment. In the course of the investigation meeting he dropped the claim regarding minimum wages, other than for the first three months of his employment.

[64] I understand from his evidence that his wages were above the minimum wage after he picked up a second delivery run and after the Blinkhornes started applying the minimum wage increase that had been in force from 1 April 2014. That being so, I will consider only the period from 1 April 2014 to 18 June 2014.

[65] For that period Mr Fredricksen says he was paid less than the minimum wage in each pay period. He calculated that he was paid \$116.83 less than he would have been entitled to under the minimum wage of \$14.25 per hour that was in force from 1 April 2014.

[66] The Blinkhornes have not provided payslips, other than some summaries of Mr Fredricksen's pay. During his employment Mr Fredricksen and other employees were advised they could obtain payslips by logging in to the payroll provider's site. Mr Fredricksen said he had difficulty doing so and once his employment ended any access was curtailed.

[67] His written request for payslips was met with the response from his employers that all his questions had been answered in previous correspondence and they would not enter into further correspondence with him. Later correspondence from a person acting on behalf of Mr Fredricksen and others, requesting wage and time records and holidays and leave records plus other information, appears to have been ignored.¹⁰

¹⁰ Letter from C Mahony dated 10 October 2016.

[68] The Blinkhornes provided half a page of handwritten calculations relating to four different pay periods for Mr Fredricksen between 7 May 2014 and 14 October 2015 which purported to establish that he had always been paid above the minimum wage. The only pay period that is within the first three months of Mr Fredricksen's employment is that of 7 May 2014.

[69] In the absence of wage and time records I am unable to accept the employers' calculations. In the circumstances I accept Mr Fredricksen's calculation in respect of the three month period in which he claims his wages fell below the minimum wage and will make orders accordingly. Holiday pay is also payable on that amount.

Is mileage allowance owed?

[70] Amongst the documents filed in the Authority by the Blinkhornes was a "*Pay example*" demonstrating how the rate per delivered newspaper was calculated. The factors taken into account were the number of kilometres per delivery run multiplied by the fuel rate of \$0.55 per kilometre. To that amount was added the estimated time of the delivery run multiplied by the minimum wage in effect at the time. The figure arrived at was then divided by the number of newspapers delivered to arrive at the rate applicable per newspaper.

[71] In Mr Fredricksen's view the inclusion of the fuel rate in that calculation resulted employees paying income tax on a travel allowance that should have been treated as a reimbursable amount that was not subject to taxation. He claims \$7,315.69 as a mileage allowance that should have been paid on top of his hourly rate.

[72] I disagree with Mr Fredricksen's analysis. The payslips he has provided show that he was paid a travel allowance, referred to in the IEAs as a fuel rate, for each of his delivery runs. These were based on the distance travelled on those runs and were not included in his taxable income.

[73] I find Mr Fredricksen was recompensed for use of his own vehicle in the course of delivering newspapers in accordance with his contractual arrangements. I dismiss his claim to a separate travel allowance.

Other money owing

[74] Mr Fredricksen claims to have been underpaid with respect to sick leave he took during his employment. He says that in October 2014 when he took one day's sick leave he was paid on a per newspaper delivery basis, for the two newspaper delivery runs he undertook. He received payment for the sick leave of \$71.03 gross, based on the number of newspapers he would have delivered. When he took a day's sick leave in July 2015, he was paid \$66.98, on the same basis.

[75] However, in the pay period ending 27 September 2015 when Mr Fredricksen took 2 days' leave he was paid \$50.88 sick leave. This was calculated on an hourly rate basis of \$3.799. Mr Fredricksen has calculated that, if he had been paid what he would have earned had he worked on those two days in September 2015, he would have received \$88.19 gross. He believes he was underpaid by \$37.31.

[76] In the pay period ending 4 October 2015, when he again took two days' sick leave, Mr Fredricksen was paid \$50.72 for the two days, calculated on an hourly rate basis of \$3.1703. He has calculated that, if he had been paid what he would have earned had he worked on those two days, he would have received \$88.19. He believes he was underpaid by \$37.47.

[77] Insufficient wage and time records were supplied to allow me to calculate what Mr Fredricksen should have been paid. However, I accept his claims under s 132 of the Act and order the Blinkhornes to pay him the difference between what he was paid for four days' sick leave and his calculation of his entitlement to pay for those days. Holiday pay on that amount is also owing.

Summary of orders in respect of Mr Fredricksen

[78] The Blinkhornes are ordered to pay Mr Fredricksen:

- (a) \$446.19 gross in respect of underpaid alternative holidays;
- (b) \$116.83 gross being arrears of wages in relation to payments at less than the minimum wage from 1 April to 18 June 2014;
- (c) \$9.35 gross being holiday pay on the amount at (b) above;
- (d) \$74.78 gross being short-paid sick leave; and

(e) \$5.98 gross being holiday pay on the amount at (d) above.

Doug Bayly

[79] Mr Bayly commenced employment with the Blinkhornes on 23 March 2014 and his employment with them ended on 28 May 2016. He had one delivery run and, as with Messrs Hussey and Fredricksen, sometimes completed additional runs to cover periods of leave taken by his co-workers.

[80] For run 16, his own delivery run, he was paid on the basis of 18.5 kilometres at, initially, \$0.21 per newspaper delivered. The payslips provided to the Authority show that rate had increased to \$0.22 by March 2015; \$0.25 from July 2015; and \$0.26 at the date of termination of his employment. The fuel rate, or reimbursement of expenses for using his vehicle for newspaper delivery, was \$0.55 per kilometre.

Was Mr Bayly paid correctly for alternative holidays?

[81] Mr Bayly's final payslip shows that he was paid \$51.86 for three alternative holidays. The payment was based on an hourly rate of \$5.7618 which, according to the employers, was actually Mr Bayly's daily rate. As with Mr Hussey and Mr Fredricksen, there was no explanation from the Blinkhornes regarding their use of a daily rate, which they averred was correctly calculated, as an hourly rate.

[82] Mr Bayly claims he was paid wrongly and not paid for all the alternative holidays to which he was entitled. He raised concerns with his employers over the payment he had received for alternative holidays by letter dated 12 August 2016.

[83] In the letter he stated his view that the pay-out for alternative holidays was "*supposed to reflect the quantity/hours actually worked on the original public holiday*". He advised his employers they needed to pay him a further \$759.09. Documents subsequently filed in the Authority amended that amount to \$707.17.

[84] The Blinkhornes have provided no wage and time records to disprove Mr Bayly's calculation and I accept his claim under s 132 of the Act and order the Blinkhornes to pay him that amount accordingly.

Other money owing

[85] In his letter to his employer of 12 August 2016, Mr Bayly also raised the issue of payment of holiday pay owing to him at the termination of his employment. This had been paid out on the basis of an hourly rate of \$5.7618. His final payslip recorded the payment of 157.01 hours at that rate, totalling \$904.66 gross. Mr Bayly disputes the accuracy of that payment and claims he is owed a further \$409.72 gross.

[86] In the absence of evidence to the contrary from the Blinkhornes I accept his calculation under s 132 of the Act and make orders accordingly.

[87] The third and final issue Mr Bayly raised with his former employers by letter of 12 August 2016 was that of the rate he was paid per paper. He expressed dissatisfaction with the rate, claiming it did not reflect the average time it took to do his run. While acknowledging the increases that had been made to the rate, Mr Bayly said he still did not think it was correct.

[88] Mr Bayly claims his run took 20 minutes more to complete than allowed for by his employers when they calculated the rate per delivered newspaper. He said this happened from the time additional streets were added to his delivery run. Mr Bayly acknowledged his employers had increased the rate per paper and paid him \$200 in back pay to cover the additional travel.

[89] Unlike Mr Hussey, who provided geographical evidence of the additional distance he travelled, for no additional compensation, Mr Bayly's calculation of an extra 20 minutes was unsupported by external evidence. He also failed to take into account the additional rate per paper and back pay in calculating the amount he considered he was owed. I dismiss this claim.

Summary of orders in respect of Mr Bayly

[90] The Blinkhornes are ordered to pay the following sums to Mr Bayly:

- (a) \$707.17 gross, being underpayment of alternative holidays at termination of his employment; and
- (b) \$409.72 gross being underpayment of holiday pay at termination of his employment.

Costs

[91] None of the applicants was represented and the issue of costs does not arise other than in relation to the Authority's filing fees. Messrs Hussey, Fredricksen and Bayly lodged their applications separately and are each entitled to be reimbursed the filing fees they paid.

[92] In addition to the orders made above, Gary and Lee Blinkhorne are ordered to pay each applicant \$71.56, in reimbursement of the filing fee.

Trish MacKinnon
Member of the Employment Relations Authority