

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2019] NZERA 319
3051938

BETWEEN SABRINA VICTORIA
 PELLIZZARI CASTANO
 Applicant

A N D GRAVITY ENTERTAINMENT
 LTD (IN LIQUIDATION)
 Respondent

Member of Authority: Peter van Keulen

Representatives: Applicant in person
 No appearance for the Respondent

Investigation Meeting: 5 April 2019

Submissions Received: 5 April 2019 from the Applicant

Date of Determination: 30 May 2019

DETERMINATION OF THE AUTHORITY

Wage arrears claim

[1] Gravity Entertainment Limited employed Sabrina Victoria Pellizzari Castano from 3 September 2018 until 19 October 2018. During the course of her employment, Gravity did not pay Ms Pellizzari Castano all of her wages and holiday pay.

[2] Ms Pellizzari Castano has made an application for payment of arrears of wages and holiday pay. I will consider this application pursuant to s131 of the Employment Relations Act 2000 (the Act).

[3] Gravity paid Ms Pellizzari Castano \$19.50 per hour and she worked around 30 – 35 hours per week.

[4] Ms Pellizzari Castano says Gravity failed to pay her weekly pay for her final week of work, being 15 October 2019 to 19 October. Ms Pellizzari Castano says she worked 30.5 hours that week and is owed \$594.75 (gross).¹

[5] Ms Pellizzari Castano earned a total of \$4,348.50 during her employment with Gravity (this includes the unpaid week of 15 October 2018). Ms Pellizzari Castano is entitled to 8% of this total amount as her accrued holiday pay² and this is \$347.88 (gross).³

[6] Ms Pellizzari Castano says she did not take any holidays during the period that she worked and she was not paid for any accrued holiday at the end of her employment, so she is owed the full amount of her accrued holiday pay of \$347.88.

Discussion

[7] Gravity did not attend the investigation meeting on 5 April 2019. This was despite Mike Harford of Gravity attending the case management conference on 5 March 2019 and agreeing that he was available to attend on 5 April 2019 for the investigation meeting.

[8] Gravity was served with a notice of direction and a notice of investigation meeting, both of which set out the date of the investigation meeting. The notice of investigation meeting also set out the time and venue for the investigation meeting.

[9] An Authority Officer contacted Mr Harford on the morning of the investigation meeting when he, nor anyone else from Gravity, failed to attend. Mr Harford said he was not aware of the investigation meeting and would not be attending.

¹ 30.5 hours x \$19.50 = \$594.75.

² Section 23 of the Holidays Act 2003.

³ \$4,348.50 x 8% = \$347.88.

[10] I considered this explanation and find it to be disingenuous. Mr Harford knew of the investigation meeting as it was set with his agreement and confirmation of availability. He also received the notices described above as well as automated reminders of the meeting.

[11] Mr Harford's approach to the investigation meeting appears consistent with his approach to dealing with Ms Pellizzari Castano's wage arrears claim throughout, suggesting he would respond and deal with it then failing to do anything, in what appears to be a simple "head in the sand" approach to the problem – hoping, I expect, that it will simply go away.

[12] I am satisfied that Gravity knew of Ms Pellizzari Castano's claim and my investigation of it. Ultimately it has chosen not to engage. In all of the circumstances I considered it was appropriate for me to proceed to investigate Ms Pellizzari Castano's claim without Gravity's involvement.

[13] In my notice of direction, which set down the investigation meeting I also directed Gravity to bring Ms Pellizzari Castano's wage and time records to the investigation meeting. As it has not turned up it has also not produced the relevant wage and time records as directed.

[14] As Gravity has failed to provide wage and time records as directed I can rely on Ms Pellizzari Castano's records of hours worked and wages owed⁴.

[15] I have reviewed Ms Pellizzari Castano's records including time sheets and correspondence with Gravity. I satisfied that Ms Pellizzari Castano's account of what Gravity owes her is correct.

[16] As a result, I conclude that Gravity owes Ms Pellizzari Castano the following amounts:

(a) One week unpaid wages being \$594.75 gross; and

(b) Holiday pay calculated at 8% of total earnings being \$347.88 gross.

[17] On this basis, Ms Pellizzari Castano is owed a total for arrears of holiday pay and wages of \$942.63 gross. Ms Pellizzari Castano is also entitled to interest on this amount which is \$15.25.

⁴ Section 132 of the Employment Relations Act 2000.

Liquidation

[18] After my investigation meeting was concluded on 5 April 2019, the Authority discovered that Gravity had been placed into liquidation on 4 April 2019. That meant I was unable to issue my determination without consent of the liquidator.

[19] That consent was not immediately forthcoming as there were some issues to resolve around Gravity being placed into liquidation, with a potential application to terminate the liquidation pending.

[20] I understand that there has been little progress on any application to terminate the liquidation by Gravity and I have now received the liquidator's consent to issue my determination.

Determination

[21] I order Gravity to pay wage arrears to Ms Pellizzari Castano of \$942.63 gross and \$15.25 for interest.

Costs

[22] Ms Pellizzari is entitled to the filing fee on the statement of problem, which she has lodged with the Authority. I order that Gravity pay Ms Pellizzari Castano the sum of \$71.56.

Peter van Keulen
Member of the Employment Relations Authority