

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

**[2019] NZERA 315
3033191**

BETWEEN

KAREN KIDD
Applicant

AND

EPSOM GIRLS GRAMMAR
SCHOOL BOARD OF
TRUSTEES
Respondent

Member of Authority: Eleanor Robinson

Representatives: Simon Meikle, Counsel for the Applicant
Richard Harrison, Counsel for the Respondent

Submissions 12 April 2019 from Respondent
15 May 2019 from Applicant

Investigation Meeting: On the papers

Determination: 28 May 2019

SUPPLEMENTARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] In Determination [2019] NZERA 183 I determined that Ms Kidd had performed work during the sleepover periods whilst employed at Epsom Girls Grammar School.

[2] In that determination I set out the approach to be adopted by the parties in calculating the payments owed to Ms Kidd in respect of those sleepover periods.

[3] The Respondent has filed a spreadsheet outlining payment calculations for the Authority's consideration. The Applicant has also filed a without prejudice response noting that the Authority is now *functus officio* as this matter is currently on challenge to the Employment Court.

[4] I have proceeded with this determination at the request of the parties who are of the view that my consideration of the basis of the calculation would be of assistance.

Basis of Calculation

[5] Ms Kidd's contractual hours were set at 40 hours per week to be worked between 6.30 a.m. to 10.30 p.m. Monday to Friday.

[6] Annual remuneration (salary plus a living allowance):
2012: \$43,000.00 producing an hourly rate of \$20.67, or weekly rate of \$827.00. The calculation on the spreadsheet provided by the Respondent sets out a weekly rate of \$824.80 for the period, and I therefore accept for the sake of clarity that the weekly wages for the contractual 40 hour week were as per the spreadsheet, namely:

- (i) Period 1: 11.04.2012 - 10.10.2012 = \$824.80
- (ii) Period 2: 17.10.2012 – 9.04.2014 = \$863.20
- (iii) Period 3: 16.04.2014 to 10.12.2014: \$958.80

[7] It is clear from the weekly wage figures that Ms Kidd was paid above the minimum wage level in respect of the weekly contractual hours.

[8] Ms Kidd is entitled to the relevant minimum wage for each sleep-over hour worked, notwithstanding that she received more than the minimum wage for the contractual hours worked. For this not to be so would involve an impermissible calculation based on averaging.

[9] Based on the Minimum Wage Order (MWO) for the relevant periods and the fact that sleepover hours were worked on a roster basis of 16 hours in one week and 24 in the other week, the calculations for the sleepover payments shown in the work sheet are:

- (i) Period 1: 11.04.2012 -10.10.2012 :\$216.00 and \$324.00 (MWO \$13.50)
- (ii) Period 2:17.04.2013 – 9.04.2014: \$220.00 and \$330.00 (MWO \$13.75)
- (iii) Period 3: 16.04.2014 – 10.12.2014:\$228.00 and \$342.00 (MWO \$14.25)

[10] The total gross weekly payment (excluding any legal deductions) due to Ms Kidd would be for the relevant period being: Contractual weekly wage as set out in paragraph [6] plus payment for the sleepover hours worked as set out in paragraph [9].

[11] In the worksheet provided, the column headed 'weekly total' is in error because it shows the contractual weekly rate calculated by use of the relevant Minimum Wage Order, whereas it should use the relevant contractual 40 hour rate.

[12] I would accept the dates and times worked as shown in the work sheet.

Costs

[13] It is my view that costs in this supplementary determination should lie where they fall.

Eleanor Robinson
Member of the Employment Relations Authority