

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2019] NZERA 353
3057712

BETWEEN DAVID BARTLE
 Applicant

AND THE TRUSTEES OF FATHER
 AND CHILD TRUST
 Respondent

Member of Authority: Eleanor Robinson

Representatives: Applicant in person
 Mark Thomas, representing the Respondent

Investigation Meeting: 12 June 2019 by telephone

Further information 12, 13 & 14 June 2019

Determination: 14 June 2019

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Mr David Bartle, claims that he is owed monies by the Respondent, Father and Child Trust (the Trust), specifically unpaid wages in respect of the period 12 January 2019 to 15 February 2019, and unpaid holiday pay.

[2] The Trust accepts that Mr Bartle is owed some monies but does not accept the amounts claimed.

Issue

[3] The issue for determination is whether or not Mr Bartle is owed monies by the Trust.

Background

[4] The Father and Child Trust was founded in 1997 with the purpose of promoting involved fatherhood.

[5] Mr Bartle commenced work with the Trust on 28 March 2011 in accordance with an individual employment agreement (the Employment Agreement). The Employment Agreement set out the following:

- Employer Father and Child Trust
- Position Funding Manager
- Hours 35 per week
- Salary \$54,600.00 p.a.
- Holiday entitlement four weeks per annum
- Notice period 2 weeks

[6] During the early part of 2019 the Trust commenced Winding Up procedures due to a shortfall in funding. Mr Bartle said that as a result of his position he had been aware that funds had been reducing for some time.

[7] Mr Bartle was informed that his role with the Trust would be redundant with effect from 15 February 2019. In a letter confirming this written by Mr Mark Thomas, Chairman of the Trust, he stated: “ Due to the financial situation of the charity I will make up any salary payment shortfall from my personal account.”

[8] Mr Bartle said that he received some monies from Mr Thomas in respect of his last period of employment, but did not receive monies for the period from 12 January to 15 February 2019, nor did he receive any payment in respect of accrued holiday entitlement.

[9] Mr Bartle claims that he is owed the sums of \$5,250.00 in respect of unpaid wages, and \$9,208.50 as holiday entitlement accrued but not taken.

[10] Mr Thomas said that in addition to Mr Bartle’s final salary payment on 11 January 2019, he, on behalf of the Trust, paid the sum of \$3,000.00 in respect of unpaid wages and notice entitlement and \$27 50 in respect of unpaid holiday entitlement to Mr Bartle.

[11] Mr Thomas said that there was uncertainty on the part of the Trust concerning holiday payments due to inadequate reporting, the reporting being part of Mr Bartle’s role with the Trust.

[12] However the Trust states that Mr Bartle received an unauthorised loan in respect of holiday taken in 2017 which he agreed to have offset against accrued holiday entitlement.

Is Mr Bartle owed monies in respect of wages and holiday entitlement by the Trust?

Wages

[13] Mr Bartle was paid the sum of \$1,625.28 gross on 11 January 2019 in respect of the period 28 December 2018 to 10 January 2019.

[14] Mr Bartle's last day of employment with the Trust was 14 February 2019; his salary entitlement for the period from 12 January to 14 February 2019 is \$5, 250.00 gross.

[15] Although the Trust claims that Mr Thomas paid \$3,000.00 to Mr Bartle as wages owed there is no written documentation confirming the actual sum paid.

[16] The evidence of Mr Bartle was that he did not receive any monies from the Trust other than the sum to which he was entitled up to 11 January 2019.

[17] I observe that in a 'Review of Financial Performance, Position and Systems' produced by Christchurch Community Accounting dated July 2018 it states that the Trust's: "bookkeeping capability is not good enough to enable timely and accurate financial reports for decision-making ...". The evidence of Mr Thomas is that this was an area of responsibility which fell within Mr Bartle's purview.

[18] However, in the absence of wage and time records being provided by the Trust I accept as proved the claims made by Mr Bartle in respect of the wages paid to him pursuant to s 132 of the Employment Relations Act 2000.

[19] I determine that Mr Bartle is owed the sum of \$5,250.00 as unpaid wages for the period 12 January to 14 February 2019.

Annual leave entitlement

[20] The payslip issued to Mr Bartle on 11 January 2019 he was entitled to 262.15 hours as Annual leave.

[21] I determine that Mr Bartle is owed the sum of \$7,864.50 as annual leave entitlement.

Remedies

[22] **I order the Trust to pay Mr Bartle the sum of \$5, 250.00 gross in respect of the unpaid notice period.**

[23] **I order the Trust to pay Mr Bartle the sum of \$7,864.50 gross (calculated as 262.15 hours x \$30 per hour) pursuant to s 24 of the Holidays Act 2003.**

Costs

[24] While costs are reserved, I note here that, subject to his submissions, Mr Bartle represented himself and, unless he incurred legal costs, it is therefore unlikely he has grounds to claim a contribution to any fair and reasonable costs.

Eleanor Robinson
Member of the Employment Relations Authority