

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2020] NZERA 112  
3080134

BETWEEN                      ETHAN KARLOS HARDY  
Applicant

AND                              BOUTIQUE RENOVATIONS  
LIMITED  
Respondent

Member of Authority:      Anna Fitzgibbon

Representatives:            Andrew Schirnack, counsel for the Applicant  
Mark Wilson, for the Respondent

Investigation Meeting:     24 February 2020 at Auckland

Submissions [and further    18 and 24 February 2020 from the Applicant  
Information] Received:      19 February 2020 from the Respondent

Date of Determination:     10 March 2020

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**DETERMINATION OF THE AUTHORITY**

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- A.    The applicant, Mr Ethan Hardy was employed by the respondent, Boutique Renovations Limited (Boutique).**
- B.    Boutique breached minimum employment standards by:**
- (a)    Failing to provide Mr Hardy with an employment agreement;**
  - (b)    Failing to provide wages and time and holiday and leave records on request; and**
  - (c)    Failing to pay for sick leave and annual holidays taken by Mr Hardy.**
- C.    Boutique is to pay penalties of \$5,000 in respect of its breaches of minimum employment standards. The penalties of \$5,000 are to be paid by Boutique to**

- the Authority, for transfer to the Crown account within 28 days of the date of this determination.
- D. Mr Hardy was unjustifiably constructively dismissed. To settle Mr Hardy's personal grievance claim, within 28 days of this determination, Boutique is to pay him the sum of \$12,000 compensation under s123(1)(c)(i) of the Employment Relations Act 2000 (the Act).**
- E. Boutique is to pay Mr Hardy the following sums within 28 days of the date of this determination:**
- (a) \$416.28 gross for unpaid sick pay,**
  - (b) \$1,663.10 gross for unpaid holiday pay, together with interest of \$34.05 on both sums.**
- F. Within 28 days of the date of this determination, Boutique is to pay to the Inland Revenue Department (IRD) KiwiSaver contributions for Mr Hardy in the sum of \$623.66 it failed to pay.**
- G. Costs are reserved.**

### **Employment Relationship Problem**

[1] The applicant, Mr Ethan (Finn) Hardy, says that he was employed by the respondent, Boutique Renovations Limited (Boutique) in November 2018. Mr Hardy says that despite a number of requests, he was not provided with an employment agreement, wages and time and holiday and leave records, and was not paid for sick leave or annual holidays during the period of his employment. Mr Hardy says as a result of these failures he resigned, and his resignation amounted to an unjustified constructive dismissal.

[2] Mr Mark Wilson and his partner, Ms Maxine Vine, are directors of, and joint shareholders in Boutique, a construction company. Boutique says Mr Hardy was not employed by it. Rather, he was contracted to it as a labour-only contractor. Accordingly, Boutique says it was not responsible for providing him with an employment agreement, wages and time and holiday and leave records, nor was it obliged to pay Mr Hardy for sick leave or annual holidays. Further, it says that as Mr Hardy was not its employee, when he left Boutique, he left of his own volition as he was entitled to do as a contractor.

### **Boutique's lack of engagement with the Authority's process**

[3] There were difficulties in serving the statement of problem on Boutique. Once service was eventually effected, Boutique failed to file a statement in reply. On 17 December 2019, the Authority held a case management conference by telephone. Mr Schirnack for Mr Hardy participated as did Mr Wilson for Boutique. Mr Wilson explained that he had been hospitalised following a spider bite and had been off work for almost four months recovering.

[4] At the case management conference, a timetable was agreed for the filing by Boutique of a statement in reply and for the exchange of witness statements. A direction in writing was issued by the Authority, confirming the agreed timetable. Boutique was directed to file a statement in reply by 13 January 2020. Once the statement in reply was filed in the Authority, the parties were directed to attend mediation. Boutique failed to file a statement in reply. In the absence of the statement in reply, the Authority scheduled an investigation meeting to investigate Mr Hardy's personal grievance claims.

[5] On 30 January 2020, the Authority issued a direction that both parties lodge and serve witness statements by 4pm on 10 February 2020, any submissions by 4pm on 19 February 2020 and that the investigation meeting would take place on Monday 24 February 2020 at 10:00am. The direction and the Notice of Investigation meeting were served on Boutique on 5 February 2020.

[6] Boutique failed to file witness statements. On 18 February 2020, Mr Wilson sent some documents to the Authority for its consideration.

### **Investigation meeting**

[7] On 18 February 2020, Mr Wilson requested that he attend any investigation meeting via phone conference as he had moved out of Auckland. The Authority agreed to Mr Wilson joining the investigation meeting by Skype.

[8] Mr Wilson then agreed to attend the investigation meeting on 24 February 2020. Both parties were given the opportunity prior to the start of the meeting to attempt to resolve issues between themselves. No resolution was reached and the meeting went ahead.

[9] In the absence of filing a statement in reply, as Mr Wilson was not represented, the Authority granted him leave to respond to the statement of problem.

[10] Mr Hardy provided the Authority with a witness statement and attended the investigation meeting. Mr Hardy's father, Mr Kirk Hardy, also attended the investigation meeting and responded to questions from the Authority. Mr Wilson, for Boutique, attended the investigation meeting and responded to questions asked by the Authority. Each of the witnesses giving evidence before the Authority swore on oath that their evidence was true and correct. Each witness had the opportunity to provide additional comments and information and did so.

[11] As permitted under s 174E of the Employment Relations Act 2000 (the Act), this determination does not set out all the evidence or submissions received. The determination states findings of fact and law and makes conclusions on issues necessary to dispose of the matter.

### **The issues**

[12] The issues for determination by the Authority are as follows:

- (a) Was Mr Hardy employed by Boutique? Or was he an independent contractor?
- (b) In the event Mr Hardy was employed by Boutique, was Boutique in breach of minimum employment standards by:
  - (i) failing to provide him with an employment agreement;
  - (ii) failing to provide wages and time and holiday and leave records on request;
  - (iii) failing to pay for sick leave and failing to pay for annual holidays.
- (c) If Boutique is in breach of minimum employment standards, should penalties be imposed on it and, if so, the amount of such penalties?
- (d) Was Mr Hardy constructively dismissed by Boutique? In the event that Mr Hardy was constructively dismissed, was it unjustified and what remedies, if any, is he entitled to?

## First Issue

### Was Mr Hardy employed by Boutique, or was he an independent contractor?

#### The Law

[13] Whether a person is an independent contractor or an employee is a question of fact that must be assessed against the relevant legal principles.

[14] The starting point for such an enquiry is s 6 of the Act. The relevant subsections state:

#### **6 Meaning of employee**

- (1) In this Act, unless the context otherwise requires, **employee**—
  - (a) means any person of any age employed by an employer to do any work for hire or reward under a contract of service; and
  - ...
- (2) In deciding for the purposes of subsection (1)(a) whether a person is employed by another person under a contract of service, the court or the Authority (as the case may be) must determine the real nature of the relationship between them.
- (3) For the purposes of subsection (2), the court or the Authority—
  - (a) must consider all relevant matters, including any matters that indicate the intention of the persons; and
  - (b) is not to treat as a determining matter any statement by the persons that describes the nature of their relationship.

[15] The leading case is the Supreme Court decision in *Bryson v Three Foot Six Limited (No. 2)*<sup>1</sup>. The Employment Court in *Singh v Eric James & Associates Limited* referred to *Bryson* and identified the following principles as applicable when considering and determining the real nature of the relationship between parties<sup>2</sup>:

- Section 6 defines an employee as a person employed by an employer to do any work for hire or reward under a contract of service, a definition which reflects the common law.
- The Authority or the Court, in deciding whether a person is employed under a contract of service, is to determine “the real nature of the relationship between them”: s 6(2).
- The Authority or the Court must consider “all relevant matters” including any matters that indicate the intention of the persons: s 6(3)(a).
- The Authority or the Court is not to treat as a determining matter any statement by the persons that describes the nature of their relationship: s 6(3)(b).

<sup>1</sup> [2005] 3 NZLR 721.

<sup>2</sup> [2010] NZEmpC 1 at [16] and [17].

- “All relevant matters” include the written and oral terms of the contract between the parties, which will usually contain indications of their common intention concerning the status of their relationship.
- “All relevant matters” will also include divergences from, or supplementations of, those terms and conditions which are apparent in the way in which the relationship has operated in practice.
- “All relevant matters” include features of control and integration and whether the contracted person has been effectively working on his or her own account (the fundamental test).
- Until the Authority or the Court examines the terms and conditions of the contract and the way in which it actually operated in practice, it will not usually be possible to examine the relationship in the light of the control, integration and fundamental tests.
- Industry or sector practice, while not determinative of the question, is nevertheless a relevant factor.
- Common intention as to the nature of the relationship, if ascertainable, is a relevant factor.
- Taxation arrangements, both generally and in particular, are a relevant consideration but care must be taken to consider whether these may be a consequence of the contractual labelling of a person as an independent contractor.

### **Intention of parties**

[16] Mr Hardy was a 16 year old school boy when he met Mr Wilson in late November 2018. He met Mr Wilson through a connection of his father, Mr Kirk Hardy. He says he was told by Mr Wilson that he was an employee and that Mr Wilson would take care of the tax.

[17] Mr Hardy provided documentation to the Authority which included copies of his BNZ bank statements showing payments by Boutique Renovations between April and September 2019. The entries for Boutique Renovations included the words “wages” after each deposit. Mr Hardy understood he was employed by Boutique.

[18] Mr Wilson says he did not intend employing Mr Hardy. He says he offered to provide Mr Hardy with some on-site experience to get a “foot in” the industry. Mr Wilson thought the work experience alone would be valuable to Mr Hardy given his young age. Mr Wilson said he told Mr Hardy he was not able to guarantee him full time employment and that’s why he took him on as a contractor. Mr Wilson said this was discussed and explained in-depth to Mr Hardy by himself and others on-site. Mr Wilson says there was no intention by Boutique to employ Mr Hardy and that labour only contracts are the way in which the industry operates.

### **Apprenticeship agreement**

[19] On 15 April 2019, Mr Hardy and Mr Wilson signed a Building and Construction Industry Training Organisation (BCITO) Training Agreement in the presence of a BCITO employee. At the top of the agreement it states: “This document forms part of the Employment Agreement between the employer and the apprentice/trainee.” In the tick box next to Employment arrangement relating to this Training Agreement, a tick has been inserted in the Labour Only box, not the Wage box. This document was not helpful in assisting the Authority with its enquiry as to the status of Mr Hardy, it appears to apply to employees or independent contractors. However, it demonstrates that industry practice is that there are both employees and contractors in the building and construction industry.

### **Requests for employment agreement**

[20] Mr Hardy’s father, Mr Kirk Hardy, gave details of his own experience and knowledge of employment agreements and independent contractor arrangements. Mr Kirk Hardy says that he spoke with Mr Wilson on numerous occasions, asking that he provide his son with an employment agreement, as he understood his son had been employed by Boutique. Mr Hardy also asked Mr Wilson to provide his son with payslips. He says he was told he would receive them, but never did.

[21] The Authority was provided with text messages between Mr Kirk Hardy and Mr Wilson. In a text message on 12 August 2019, Mr Kirk Hardy requested Mr Ethan Hardy’s employment agreement for his apprenticeship and also asked for payslips.

Mark – I am still waiting on seeing Finn’s IEA for his apprenticeship – and also want to see payslips plz – he cannot keep going on with sporadic payments as he has bills and payments to make and is not fair on him – he travels a lot and never complains and would not say anything – however as his dad this needs to be sorted ASAP – I would like to see payslips (IRD) from when he started with you last year til now as well as a employment agreement given to him by the end of this week – sorry mate but you have promised to get this sorted a number of times now and I have seen nothing.

On 16 August 2019, Mr Wilson responded by text:

Anyway I have done Fins contract I just need to fine tune things over the weekend with payslips. Find the last of the info from missing timesheets to tally up his hours. I do require timesheets every Friday arvo. This has been a bit of a struggle. Or at the bare minimum the hours text through. Has been discussed. On more than one occasion every week. Will get it sorted over the weekend and get it all to you. Cheers.

On 24 September 2019, Mr Kirk Hardy again sent a text to Mr Wilson as follows:

Hi Mark – can u let me know why Finn hasn't been paid holiday pay as by law he is entitled to? Also still no contract and still no payslips?

On 25 September 2019, Mr Wilson responded:

Hiring: contractors vs employees – [business.govt.nz](https://www.business.govt.nz/news/hiring-contractors-vs-employees/)  
<https://www.business.govt.nz/news/hiring-contractors-vs-employees/>  
Sorry for the delay. I hope this makes some sense on how labour only employment agreement works. Thanks.

Mr Hardy responded as follows:

Mark he was a 16 yr old boy and u gave him no contract at all and nothing but as far as I can see took advantage of him – where r his invoices then or payslips? I will take this up with my lawyers now and Finn will not be returning to work for you –

[22] Mr Hardy worked for Boutique for 10 months, during which time, Mr Wilson promised to provide him with an employment agreement, Mr Hardy was paid wages and both Mr Wilson and Mr Hardy signed an apprenticeship agreement.

[23] Once Mr Kirk Hardy began to put pressure on Mr Wilson to pay holiday pay, Mr Wilson sent a link that about the differences between labour only contracts and employment agreements.

[24] From the evidence and the documents provided to me, it is my view that it is more likely than not that the intention of the parties was that Mr Hardy was employed by Boutique as an apprentice builder.

### **Control**

[25] One of the other common law tests applied by the courts to assess the true nature of a work relationship, is that of control.

[26] Mr Hardy says he consistently worked from 7 am to 4pm each day, except on Friday, when he finished work at 3.30pm. He took his instructions from Mr Wilson. Mr Hardy says he only did the work Mr Wilson told him to do. This included drilling holes, screwing bolts

and sweeping the floor and as time went on he attended to more building work. It was after three months of this work that Mr Wilson offered Mr Hardy an apprenticeship through BCITO.

[27] Mr Hardy says he and Mr Wilson talked about the difference between an employee and a contractor. Mr Hardy says Mr Wilson told him he was an employee, he was paid hourly and he provided Mr Wilson with his IRD number and bank account. Mr Hardy worked for Mr Wilson and filled in timesheets, he did not come and go as he pleased and did not issue invoices to Boutique.

### **Taxation**

[28] Mr Hardy gave evidence that he was asked for his bank account and his IRD number by Mr Wilson and was paid wages by Boutique. Mr Hardy was not in business on his own account and was not asked to and did not issue invoices for work performed for Boutique.

[29] Taking all the above factors into account, I conclude that Mr Hardy was an employee of Boutique, not a contractor to it.

[30] The answer to the first issue is Mr Hardy was an employee of Boutique.

### **Second issue**

#### **Did Boutique breach minimum employment standards by:**

- (a) Failing to provide Mr Hardy with an employment agreement;
- (b) Failing to provide wages and time and holiday and leave records on request;
- (c) Failing to pay for sick leave and annual holidays.

[31] Both Mr Hardy and his father, Mr Kirk Hardy, gave evidence that they repeatedly requested Boutique to provide Mr Hardy with an employment agreement. Section 64(3) of the Act requires an employer, as soon as is reasonably practicable, to provide an employee with a copy of his or her individual employment agreement. Boutique failed in this regard.

[32] On 10 October 2019, counsel for Mr Hardy sent a letter to Mr Wilson setting out Mr Hardy's concerns and requested a copy of Mr Hardy's employment agreement together with wage and time records and holiday and leave records. Mr Wilson sent a text back on 16 October 2019 as follows:

Hey buddy I got time for your lawyers rubbish Finn gives the timesheets that are necessary for the weeks he will get paid for the missing weeks I'm sorry I had to end this way. On the other hand what I did give was a 16 year old boy some insight experience and a chance. There's you will find out not everyone out there will take on a 16 year old experience get the timesheet through for the hours worked. No ones going to do anything by lawyers apart from the lawyers labour only contractors a labour only contractor 60% of builders in New Zealand operate this way. Thanks.

## **Wages**

[33] No wages and time or holiday and leave records were provided. Section 130 of the Act requires that every employer keep a record (called the wages and time record). Section 130(1) sets out the details required in those records. Under s 130(2) of the Act, an employer must, upon request by an employee or by a person authorised, provide that employee with access to, or a copy of the wages and time record relating to the employment of the employee. No wages and time record was provided. Section 81 of the Holidays Act 2003 requires an employer to keep a holiday and leave record with details of the name of the employee, date on which the employee's employment commenced and so forth as set out. Under s 82(2) of the Holidays Act an employer who receives a request for access to or a copy of information in the holiday and leave record relating to an employee, must comply with the request as soon as practicable. No holiday and leave records were provided by Boutique following the request.

[34] Mr Hardy was sick on a couple of occasions during the course of his employment. On 28 May 2019, Mr Hardy provided a medical certificate for sickness. Similarly, on 5 August 2019, Mr Hardy provided a medical certificate for sickness. On both occasions, Mr Hardy's father, Mr Kirk Hardy, made contact with Mr Wilson to let him know that Mr Hardy was sick. When asked for payment for sick leave after he had been employed for six months, Mr Wilson's response was as follows:

Must be a hell of a hangover haha. I'll get his contract to him by the end of the week which explains all. Hope he's feeling better ...

[35] In September 2019, Mr Hardy asked for and it was agreed that he could take annual leave. Mr Hardy was not paid holiday leave for his holiday. On 24 September 2019, Mr Hardy's father sent a text to Mr Wilson asking why Mr Hardy had not been paid holiday pay. The response from Mr Wilson was to send a text to Mr Kirk Hardy referring to a website on the difference between contractors and employees. It was at this point that Mr Hardy resigned from his employment. I find that Boutique failed to pay Mr Hardy his holiday pay.

[36] In answer to Issue 2, Boutique breached employment standards.

### Third issue

**If Boutique is in breach of minimum employment standards, should penalties be imposed on it and, if so, the amount of such penalties?**

[37] The legal framework for assessing and fixing a penalty, having regard to the statutory requirements in s 133A of the Act and the full Court's judgment in *Boorsboom v Preet Pvt Limited* were recently summarised by the Court in *Nicholson v Ford*<sup>3</sup> and *A Labour Inspector v Daleson Investment Limited*.<sup>4</sup>

[38] The Court in those cases confirmed the considerations as:

- (a) The object of the Act as stated in s 3 of the Act (statutory consideration 1);
- (b) The nature and extent of the breach (statutory consideration 2);
- (c) Whether the breach was intentional, inadvertent or negligent (statutory consideration 3);
- (d) The nature and extent of any loss or damage suffered by any person or gains made or losses avoid by the person because of the breach of involvement in the breach (statutory consideration 4);
- (e) Whether the person or entity in breach has paid an amount in compensation, reparation or restitution, or has taken other steps to avoid or mitigate any actual or potential adverse effects of the breach (statutory consideration 5);
- (f) The circumstances of the breach, or involvement in the breach, including the vulnerability of the employee (statutory consideration 6);
- (g) Previous conduct (statutory consideration 7);
- (h) Deterrents (both particular and general) (*Preet* additional consideration 1);
- (i) Degree of culpability (*Preet* additional consideration 2);

<sup>3</sup> *Nicholson v Ford* [2018] NZEmpC 132 at [18].

<sup>4</sup> *A Labour Inspector v Daleson Investment Limited* [2019] NZEmpC 12 at [19]; *Boorsboom v Preet Pvt Limited* [2016] NZEmpC 143 at [18];

- (j) Consistency of penalty awards in similar cases (*Preet* additional consideration 3);
- (k) Ability to pay (*Preet* additional consideration 4);
- (l) Proportionality of outcome to breach (*Preet* additional consideration 5).

[39] Having considered those factors, I reach the following findings:

- (a) Failing to provide a copy of the employment agreement when requested under s 64(3) of the Act, failure to provide wages and time and holiday and leave records on request as required by s 130(2) of the Act and s 82 of the Holidays Act 2003 should be globalised from 3 breaches to 1, reflecting an overall failure to keep adequate employment records; and
- (b) Failing to pay sick leave as required by ss 71 and 72 of the Holidays Act 2003 and failure to pay for annual holidays agreed to be taken under s 22 of the Holidays Act 2003 and failure to pay holiday pay on termination of employment as required by s 23 of the Holidays Act to be globalised from 4 to 1 breach being a systemic error in its approach to making holiday and sick leave payments.

[40] As Boutique is a company, the maximum total penalty available in respect of each breach is \$20,000. The nature of the breaches are serious. Mr Hardy was at the very beginning of his working life. A key object of the Act is the acknowledgement and addressing of the inherent inequality of power in employment relationships. The failure to provide Mr Hardy with an employment agreement when both he and his father had repeatedly asked for one meant he was at a disadvantage in circumstances in which there was a power imbalance and he was a young vulnerable employee. Failures to keep compliant records and the failure to pay for sick and annual holidays are all serious breaches of employment standards under the Act. It is important that employers understand their obligations.

[39] Further, by failing to pay Mr Hardy what was due to him, put Boutique at an advantage in comparison to its competitors. Such conduct must be deterred.

[40] Mr Hardy has lost the use of money owing to him at the time it became due and Boutique received the benefit of money which was not its to retain.

[41] Global penalties amount to a maximum of \$40,000.

### **Mitigating factors**

[42] Boutique provided no evidence of its financial circumstances to the Authority, despite being aware of the investigation meeting for some time. Mr Wilson did give evidence that he had been hospitalised following a spider bite and that had “set him back”.

[43] Taking into account these factors and the need for consistency with other penalty awards, I consider a reduction of fifty per cent, across the 2 heads of breach to be appropriate. The adjusted total for penalties so far amounts to \$20,000.

[44] Standing back and assessing the proportionality of the outcome for Boutique, I conclude an appropriate global figure for all penalties, taking into consideration similar other cases, to be \$5,000 in the circumstances.

[45] The penalties of \$5,000 are to be paid by Boutique to the Authority, for transfer to the Crown account within 28 days of the date of this determination.

### **Was Mr Hardy constructively dismissed by Boutique?**

[46] The onus is on Mr Hardy to establish that he was constructively dismissed. A constructive dismissal might occur where a breach of duty by the employer leads an employee to resign.<sup>5</sup> In *Woolworths*, the Court of Appeal was clear that the employer’s conduct must amount to a repudiation of the contract rather than just be unreasonable.

[47] Mr Hardy gave evidence that following receipt of the text from Mr Wilson to his father on 24 September 2019 referring them to a website pointing out the differences between an employee and a contractor, he decided he would leave. Mr Hardy says “By this point, with no contract, no pay for sick leave and annual leave, and uncertainty about when and what I would be paid, I decided that I would leave”.<sup>6</sup> I consider Mr Hardy was constructively dismissed and in the circumstances as set out above, it was unjustified.

### **In the event that Mr Hardy was constructively dismissed, was it unjustified and what remedies, if any, is he entitled to?**

[48] Mr Hardy seeks compensation under s 123 of the act for humiliation, loss of dignity and injury to feelings suffered by him. Mr Hardy went from being an enthusiastic apprentice

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<sup>5</sup> *Auckland Shop Employees Union v Woolworths (NZ) Limited* [1985] 2 NZLR 372.

<sup>6</sup> Para 12 Hardy witness statement.

builder at the start of his career, to being frustrated by the way in which he was treated by Mr Wilson. Mr Hardy managed to obtain another position with another building company and is progressing his apprenticeship through BCITO.

[49] I consider compensation in the sum of \$12,000 for humiliation, loss of dignity and injury to feelings appropriate in the circumstances.

[50] Boutique has 28 days from the date of this determination to pay Mr Hardy compensation in the sum of \$12,000.

### **Wage Arrears**

#### **Sick leave**

[51] Mr Hardy was not paid for four days on which he had to take sick leave, being 28 and 29 May and 5 and 6 August 2019. Based on Mr Hardy's average daily gross income of \$104.07, Mr Hardy is entitled to \$416.28 gross for sick leave.

[52] Boutique has 28 days from the date of this determination to pay Mr Hardy sick leave in the sum of \$416.28 gross.

#### **Annual leave**

[53] Mr Hardy was not paid for annual holidays during the course of his employment or upon termination of his employment. Mr Hardy's total gross income amounted to \$20,788.70. Eight per cent of his total gross income amounts to \$1,663.10.

[54] Boutique has 28 days from the date of this determination to pay Mr Hardy holiday pay in the sum of \$1,633.10 gross.

#### **Tax liability**

[55] Mr Hardy claims payment by Boutique of a liability for tax as a result of Boutique's default in paying it. However, that claim was not a claim set out in the Mr Hardy's statement of problem and Boutique did not have the opportunity to respond to it. In the circumstances, it is my view that this is a matter between the Inland Revenue Department (IRD) and Boutique. In the event the IRD seeks payment of tax from Mr Hardy as a result of Boutique's default, he has 14 days from any such notification to make an application to the Authority for further directions.

**Kiwisaver**

[56] Mr Hardy was a KiwiSaver member but did not receive any KiwiSaver contributions from Boutique. Mr Hardy is owed \$623.66 in contributions by Boutique.

[57] Boutique has 28 days from the date of this determination to pay this sum to IRD on half of Mr Hardy.

**Interest**

[58] Mr Hardy sought the payment of interest on unpaid sick leave and annual holidays pursuant to Schedule 2, clause 11 of the Act in accordance with Schedule 2 of the Interest on Money Claims Act 2016. From the date of the statement of problem until the investigation meeting on 24 February 2020, the interest on the sums owed is \$34.05.

[59] I order interest of \$34.05 to be paid by Boutique to Mr Hardy within 28 days of the date of this determination.

**Costs**

[60] Mr Hardy has 28 days from the date of this determination to lodge a memorandum as to costs. Boutique has 14 days from receipt of Mr Hardy's memorandum as to costs in which to respond.

**Anna Fitzgibbon**  
**Member of the Employment Relations Authority**