

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2016] NZERA Auckland 373
5636005

BETWEEN MELANIE ANDERSON
Applicant
AND PHOENIX PUBLISHING
LIMITED
Respondent

Member of Authority: T G Tetitaha
Representatives: Applicant in person
No appearance for the Respondent
Investigation Meeting: On the papers
Submissions Received: 1 November 2016 from Applicant
Date of Determination: 15 November 2016

**DETERMINATION OF
THE EMPLOYMENT RELATIONS AUTHORITY**

- A. There is an order Phoenix Publishing Limited pay Melanie Anderson the sum of \$3,332.49 pursuant to s.131 of the Employment Relations Act 2000.**
- B. There is an order for payment of interest at 5% upon the judgment sum calculated from the date of this determination until payment pursuant to clause 11, Schedule 2 of the Employment Relations Act 2000.**
- C. Phoenix Publishing Limited pay costs of \$71.56 to Melanie Anderson.**

Employment relationship problem

[1] Melanie Anderson seeks payment of outstanding holiday pay and reimbursement of her expenses.

Non-appearance by Phoenix Publishing Limited

[2] I have determined to exercise my power to continue to determine this matter in absence of Phoenix Publishing Limited (Phoenix).¹ This is because no good cause has been shown for the failure by Phoenix to file a statement in reply or take steps in this proceeding.²

Hearing on the papers

[3] At the teleconference on 27 September 2016 it was determined this matter may proceed to be determined without holding an investigation meeting on the basis sworn evidence was provided by Ms Anderson. This has now been filed and the matter is ready for determination.

Relevant facts

[4] Ms Anderson was employed as a Territory Advertising Manager on or about 14 September 2015. She signed an individual employment agreement (the agreement).

[5] The agreement provided for leave to be “*governed by the provisions of the Holidays Act 2003 ...*”³ Clause 11.3 of the agreement provided for Ms Anderson to be paid annual leave in accordance with the Holidays Act 2003.

[6] There are no leave records produced because Phoenix has failed to take any steps in this proceeding. I can infer from the failure to take steps that Phoenix have no defence to Ms Anderson’s claims.

[7] Ms Anderson says she took no holidays during her period of employment. Her evidence showed she was employed for less than 12 months. The total gross salary she received during the period of her employment by Phoenix Publishing was \$43,731.98. Given her employment ended before the 12 months anniversary of her accruing annual leave, the value of her annual leave entitlement must be determined by 8% of her gross earnings for the period.⁴ Therefore her leave entitlement at termination was \$3,498.56.

¹ Clause 12, Schedule 2 of the Employment Relations Act 2000 (the Act).

² See Minute of the Authority dated 27 September 2016.

³ Clause 11.1 individual employment agreement dated 14 September 2015.

⁴ Sections 25 and 28 Holidays Act 2003

[8] She accepts she received payments totalling \$819.67. Deducting the amounts paid, Ms Anderson is owed \$2,678.89 for unpaid annual leave.

Expenses

[9] Appendix B to the agreement provided for reimbursement of fuel expenses at 77 cents per kilometre. Ms Anderson has provided evidence she drove approximately 680 kms. She is therefore owed \$523.60.

[10] She also seeks reimbursement for the costs of a one way taxi fare from the Auckland airport to the respondent director's house of \$100. She also incurred the expense of parking in Napier for three days totalling \$30. Ms Anderson is seeking \$130 expenses.

[11] Given Ms Anderson was directed by the respondent to attend the meeting in Auckland, it can be reasonably inferred the company would meet the expenses for her doing so. Her usual sales territory defined by the respondent was from Gisborne to Dannevirke. I am prepared to order reimbursement of Ms Anderson's expenses reasonably incurred being \$130.

[12] Accordingly the following orders are now made:

- (a) There is an order Phoenix Publishing Limited pay Melanie Anderson the sum of \$3,332.49 pursuant to s.131 of the Employment Relations Act 2000.
- (b) There is order for payment of interest at 5% upon the judgment sum calculated from the date of this determination until payment pursuant to clause 11, Schedule 2 of the Employment Relations Act 2000.
- (c) Phoenix Publishing Limited pay costs of \$71.56 to Melanie Anderson.

T G Tetitaha
Member of the Employment Relations Authority