

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2017] NZERA Christchurch 85
3004871

BETWEEN BAYWATCH 2005 LIMITED
Applicant

A N D VANESSA WRIGHT
Respondent

Member of Authority: David Appleton

Representatives: Lionel White, advocate for Applicant
No appearance by Respondent

Investigation Meeting: 30 May 2017 by telephone

Date of Determination: 30 May 2017

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Baywatch) seeks recovery of wages paid to Ms Wright in advance in respect of a period in which she subsequently did not work. Ms Wright has taken no part in the proceedings, not answering her telephone for the directions conference call, or for the investigation meeting.

[2] I am satisfied that Ms Wright was aware of the investigation meeting as she was served personally with the notice of hearing and supporting documentation 10 days previously by Baycorp, which has provided a sworn affidavit of service.

Background

[3] Baywatch owns and operates the Baywatch Motor Lodge in Timaru. Ms Wright was employed by Baywatch on a casual employment agreement as a cleaner.

[4] On 19 December 2016 Ms Wright, along with other staff, was paid in advance for 15 hours' work, due to Baywatch's accountant being away. She was paid a gross sum of \$251.10, receiving a net sum of \$191.14 into her bank account.

[5] Mr White said in evidence that there was an understanding that the staff would work over the Christmas/New Year period. However, Ms Wright did not turn up for work, and never made herself available for work again.

[6] Mr White said that attempts were made to recover the money from Ms Wright, but she failed to pay it back. The Authority saw a copy of a note from Mr White's partner, Ms Divan, which recorded a conversation with Ms Wright on or around 9 January 2017 in which Ms Wright said that she would get the money back to the company. It has not, however, been paid back according to Mr White.

Determination

[7] First, having seen copies of Baywatch's bank statement and payroll report for the material time, I am satisfied that Baywatch did make a payment to Ms Wright at the time, and in the amount claimed. I am also satisfied on the basis of Mr White's evidence that Ms Wright did not work during the period which the pay related to.

[8] Although Ms Wright was employed on a casual employment agreement, I am satisfied that, by accepting the pay she received from Baywatch shortly before Christmas 2016, she was thereby accepting an offer to work. Upon accepting that offer to work, she was obligated to perform the work. By failing to perform the work, Ms Wright has acted in fundamental breach of her employment agreement.

[9] Damages have been incurred by Baywatch as a result of that breach. Those damages are quantifiable in the sum of \$251.10. Ms Wright is liable to account to Baywatch for those damages.

[10] The one slight complication is that two elements of the \$251.10 were not received by Ms Wright directly. She received \$191.14. The sum of \$29.84 was withheld as a PAYE contribution and a further \$30.12 attributed towards payment of her student loan.

[11] Whilst Ms Wright received the benefit of the student loan deduction, she did not receive the benefit of the PAYE deduction. It may be possible for that element to

be claimed by Baywatch as a credit from the Inland Revenue Department. Baywatch is therefore entitled to be paid back by Ms Wright the sum of \$221.26.

[12] Baywatch is also entitled to recovery from Ms Wright of the \$71.56 lodgement fee incurred in lodging its claim with the Authority.

Order

[13] I order Ms Wright to pay the following sums to Baywatch 2005 Limited by no later than 10 calendar days from the date of this determination:

- a. \$221.26; and
- b. \$71.56.

David Appleton
Member of the Employment Relations Authority