



# New Zealand Employment Relations Authority Decisions

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## **Bicknell v Phoenix Publishing Limited (Auckland) [2017] NZERA 42; [2017] NZERA Auckland 42 (21 February 2017)**

Last Updated: 6 March 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2017] NZERA Auckland 42  
5638118

BETWEEN CLELIA BICKNELL Applicant

AND PHOENIX PUBLISHING LIMITED

Respondent

Member of Authority: Eleanor Robinson

Representatives: Applicant in Person

Bronwyn Rawson, representing the Respondent

Investigation Meeting: 21 February 2017 at Auckland

Oral Determination Delivered

Date of Written Determination:

21 February 2017

21 February 2017

ORAL DETERMINATION OF THE AUTHORITY

**This determination is a written record of an oral determination delivered on 21 February 2017.**

### **Employment Relationship Problem**

[1] Ms Clelia Bicknell, the Applicant, is claiming unpaid wages, unpaid holiday pay entitlement and unpaid expenses from the Respondent, Phoenix Publishing Limited (Phoenix Publishing)

[2] Phoenix Publishing Limited has failed to file a Statement in Reply despite having been requested to do so at telephone conference calls held on 23 November 2016 and 1

February 2017.

### **Issues**

[3] The issue for determination is whether or not Ms Bicknell is owed the monies claimed by Phoenix Publishing.

### **Note**

[4] Phoenix Publishing failed to follow directions of the Authority. No Statement in Reply was filed despite the requests to Ms

Rawson, sole director and major shareholder of Phoenix Publishing. Ms Rawson alleged that she was unable to attend a directed mediation because she was ill, but failed to provide any medical evidence in support as requested by the Authority.

[5] Ms Rawson did not attend the Investigation Meeting in person, claiming initially that she was delayed by traffic, then subsequently that she had been forced to return to her home due to an incident and an associated request from the SPCA.

[6] I consented to have Ms Rawson attend the Investigation Meeting by telephone, however her manner on the telephone call was abrasive and disrespectful, and I found it difficult to speak, I terminated the call until Ms Rawson was able to proceed in a respectful manner.

[7] The Authority Officer attempted to contact Ms Rawson by telephone to ascertain her intentions regarding a resumption of her attendance, but was unable to do so on either of the telephone numbers supplied by Ms Rawson.

[8] I was satisfied that Ms Rawson had indicated clearly her intentions regarding attendance at the Investigation Meeting, and consequently proceeded with the Investigation Meeting pursuant to clause 12 of Schedule 2 of the Act.

## **Facts**

[9] Ms Bicknell was employed as a Territory Advertising Manager by Phoenix Publishing on 16 March 2016.

[10] Ms Bicknell was provided with an individual employment agreement (the Employment Agreement) which contained the following terms: Remuneration: \$55,000.00 p.a.  
Hours of work: 8.30 a.m. to 5.30 p.m.

Notice period: 4 weeks in writing

[11] Ms Bicknell resigned her employment in writing on 8 July 2016, and it was agreed by Ms Rawson to waive the notice period as permitted in accordance with clause 14.4 of the Employment Agreement.

## **Determination**

[12] Ms Bicknell has filed submissions and receipts and other evidence in support of her claim. No documentation has been received from Phoenix Publishing.

### *Notice Period*

[13] Ms Bicknell was not required to work her notice period. She accepts that from the amount of one month's salary of \$4,583.33 gross there should be a deduction made for 2 days sickness absence during her employment.

**[14] I order Phoenix Publishing to pay Ms Bicknell the sum of \$4125.00 gross (calculated as \$4,583.33 gross minus \$458.33 gross) in respect of the unpaid notice period.**

### *Holiday pay*

[15] Ms Bicknell said she received no holiday pay entitlement during her period of employment with Phoenix Publishing.

**[16] I order Phoenix Publishing to pay Ms Bicknell the sum of \$1,466.66 gross (calculated as \$18,333.32 x 8%) pursuant to [s 23](#) of the [Holidays Act 2003](#).**

### *Petrol*

[17] The Employment Agreement provides that payment will be made in respect of petrol expenses upon receipt of a travel log. Ms Bicknell said that there was no travel log provided to her and it was agreed that business petrol expenses would be reimbursed upon production of receipts, and provided email confirmation of this agreement.

**[18] I order that Phoenix Publishing pay Ms Bicknell the sum of \$494.89 in respect of unpaid petrol expenses.**

### *Telephone*

[19] Ms Bicknell said that it was agreed that her telephone business expenses would be reimbursed, and supplied email confirmation of this agreement.

**[20] I order that Phoenix Publishing pay Ms Bicknell the sum of \$190.92 in respect of unpaid telephone expenses.**

### *Serving Fee*

[21] The Authority attempted to effect service of the Statement of Problem on Phoenix Publishing, but was unable to do so. Ms Bicknell was required to do, and was successful in effecting service, providing confirmation.

**[22] I order that Phoenix Publishing pay Ms Bicknell the sum of \$121.90 in respect of the serving fee charge.**

#### *Flight Charges*

[23] I directed the parties to attend mediation and a date was agreed and confirmed by the parties.

[24] Ms Bicknell confirmed flights from Hawkes Bay, her place of residence, to Auckland, after confirmation that the mediation would proceed as agreed. The mediation was cancelled the day before the agreed mediation, and Ms Bicknell incurred the costs of the air flights.

[25] Ms Rawson attributed her failure to attend the agreed mediation due to illness and offered to provide medical confirmation of this. Despite requests that she do so, no medical certification whatsoever has been provided to the Authority.

**[26] I order that Phoenix Publishing pay Ms Bicknell the sum of \$158.00 in respect of the cancelled flight charges.**

#### **Costs**

[27] Ms Bicknell is entitled to costs in respect of her attendance at the investigation

Meeting today.

[28] A tariff based approach is that usually adopted by the Authority. For a 1.5 hour investigation the tariff would normally equate to \$875.00.

**[29] I order that Phoenix Publishing pay Ms Bicknell the sum of \$875.00 in respect of costs.**

**[30] Ms Bicknell is also to be reimbursed the filing fee of \$71.56.**

[31] The amounts set out above for payment to Ms Bicknell by Phoenix Publishing are payable within 28 days of the date of this determination.

**Eleanor Robinson**

**Member of the Employment Relations Authority**

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