

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 108
5367729

BETWEEN TATYANA BRODOVSKAYA
Applicant

A N D DACIRI INVESTMENTS
LIMITED t/a HAIR XPRESS
Respondent

Member of Authority: K J Anderson

Representatives: Tatyana Brodovskaya, In Person
No appearance by the Respondent

Investigation: 26 March 2012 at Auckland

Date of Determination: 28 March 2012

DETERMINATION OF THE AUTHORITY

The absence of the respondent

[1] A *Statement of Problem* from Ms Brodovskaya was received by the Authority on 9 January 2012. It was delivered by courier to the registered office of the respondent company on 11 January 2012 and there is a signature for receipt of the relevant papers. The respondent, Daciri Investments Limited (DIL), did not file a statement in reply. According to the file, the Support Officer spoke to Mr Christopher Iles, a director of the company, on 28 February 2012 and subsequently forwarded to him, by email attachment, the *Statement of Problem* along with the associated relevant documents, including *Salary Advice* material received by Ms Brodovskaya during her employment at Hair Xpress. The Support Officer also informed Mr Iles, via the email, that the Authority member wished to have a case management conference call with the parties on either 5 March 2012 or 12 March 2012. Mr Iles replied via an email later on 28 February 2012 and informed that he did not:

[“... really see the point in a conference due to the fact that Daciri Investments Limited is likely to be placed in liquidation¹ in the near future by either the IRD or Westfield. This will also likely result in bankruptcy for the director. There is no surplus funds available.

[2] Via a *Notice of Investigation Meeting*, couriered on 8 March 2012, the respondent was notified that an investigation meeting would take place on 26 March 2012 but there was no attendance at the investigation meeting by any person representing DIL. I am satisfied that the respondent has full knowledge of the claims of the applicant and the investigation meeting, but has chosen not to participate in the proceedings of the Authority. Therefore, pursuant to Clause 12 of Schedule 2 to the Employment Relations Act 2000, the Authority has acted fully in this matter as if the respondent has duly attended.

The claim for unpaid holiday pay

[3] Ms Brodovskaya was employed as a hairdresser/stylist. She commenced her employment on 17 December 2010 under the terms of a written employment agreement. The copy of the agreement produced to the Authority is unsigned but I am satisfied that the parties agreed to the terms and conditions provided by it, in particular, that Ms Brodovskaya would be paid \$17.00 per hour.

[4] The evidence of Ms Brodovskaya is that she was well treated by her employers during the time of her employment and there were no grounds for any complaint. Unfortunately, via a letter from her employer dated 17 December 2011, Ms Brodovskaya was informed that the business trading as Hair Xpress was to cease operating on 24 December 2011. The last day of employment for Ms Brodovskaya was 23 December 2011.

[5] Ms Brodovskaya told the Authority that shortly before being told of the closure of the business, she had asked to take annual leave later in December 2011 but was informed that the business was too busy at that time of the year and her request was declined. Hence, at the time of the cessation of her employment, Ms Brodovskaya had not taken any annual leave and her claim before the Authority is for unpaid annual leave for the total period of her employment. That is: from 17 December 2010 to 23 December 2011.

¹ The records of the Companies Office reveal that the company is currently not in liquidation.

[6] The fact that Ms Brodovskaya has a due entitlement to be paid for her accrued annual leave does not appear to be disputed by the respondent, but in any event, Ms Brodovskaya has provided *Salary Advice* details for 44 of the weeks that she worked. Ms Brodovskaya told the Authority that she was not given salary advice details for the missing weeks. Nevertheless, I am satisfied that Ms Brodovskaya has a valid claim for annual holiday pay pursuant to section 24 of the Holidays Act 2003.

[7] Ms Brodovskaya has not calculated the holiday pay that she is entitled to and I note from the pay slips that the weekly hours of work and the consequent wages received, vary somewhat. Therefore, I have concluded that the fairest way to calculate the entitlement due to Ms Brodovskaya is to arrive at an average gross weekly wage based on the material available. For the 44 weeks for which pay advice is available Ms Brodovskaya earned the gross sum of \$24,976.95; equating to an average weekly wage of \$567.66.

Determination

[8] I find that pursuant to section 24 of the Holidays Act 2003, Ms Brodovskaya was not paid her due entitlement to accrued holiday as at the termination of her employment on 23 December 2011.

[9] On the basis of the wage advice material that is available I conclude that an average gross weekly would be \$567.66 and that Ms Brodovskaya is entitled to be paid four weeks' annual holiday at this rate; a total amount of \$2,270.65.

[10] Daciri Investments Limited is ordered to pay to Ms Tatyana Brodovskaya the gross sum of \$2,270.65. Ms Brodovskaya is also entitled to be paid the sum of \$71.56 for the application fee paid to the Authority; a total amount of \$2,342.21. The total amount due must be paid to Ms Brodovskaya not later than 21 days from the date of this determination. I also direct that pursuant to Reg 26 of the Employment Relations Authority Regulations 2000, Ms Brodovskaya be provided with a certificate of determination, sealed with the seal of the Authority, recording that Daciri Investments Limited is ordered to pay to Ms Brodovskaya the gross sum of \$2,270.65; plus costs of \$71.56.

K J Anderson

Member of the Employment Relations Authority