

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2011 NZERA Christchurch 82  
5338272

BETWEEN

IVAN BUTERA  
Applicant

A N D

ALLIANCE COMMERCE  
LIMITED t/a ART  
RESTAURANT  
Respondent

Member of Authority: Helen Doyle

Representatives: Applicant in person  
Alex Bushe, Advocate for Respondent

Teleconference: 16 May 2011

Further correspondence: In May 2011

Date of Determination: 15 June 2011

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Mr Butera was employed as head chef by Alliance Commerce Limited t/a Art Restaurant. He has been unable to work at the restaurant since the Christchurch earthquake on 22 February 2011. Mr Butera says that he is owed holiday pay and arrears of wages.

[2] Whilst there has been some communication received on behalf of Alliance Commerce Limited, no statement in reply has been lodged with the Authority.

**The investigation process**

[3] Mr Butera is currently residing in Australia. He advised the senior support officer, Tony Gallen, after lodging the statement of problem that since the earthquake

on 22 February he had been talking about issues regarding payment with the manager of the restaurant, Alex Bushe.

[4] Mr Gallen arranged for the statement of problem to be served on Alliance Commerce Limited at its address for service which is the same as its registered office. The courier information received by the Authority indicated that the documents delivered were signed for at 10.23am on 23 April 2011.

[5] After the expiration of 14 days from 23 April 2011, Mr Gallen wrote to Mr Bushe by letter dated 3 May 2011 and explained in his letter that the Authority would hold a telephone conference with Mr Butera and a representative of the company at 9.30am on Monday, 16 May 2011. The Authority had a telephone number for Mr Bushe but not one for the director of Alliance Commerce Limited. The senior support officer asked Mr Bushe to provide a different telephone number if a company official wanted to take part. Mr Gallen did not hear further from Mr Bushe.

[6] On 16 May 2011, Mr Gallen was unable to make contact with Mr Bushe but was able to make contact with Mr Butera. The Authority proceeded to talk to Mr Butera.

[7] Mr Butera explained that since he had lodged his employment relationship problem he had received a \$1,000 payment in reduction of the sum owing to him. Mr Butera said that he was still owed \$730 net for wages and he was also owed holiday pay and was seeking reimbursement of the filing fee of \$71.56. Mr Butera explained that he was only given pay slips every now and again, although he provided copies of his bank statements for the account into which he was either paid by automatic payment or into which he made cash deposits. Mr Butera said that inquiries he had made with the Inland Revenue Department did not satisfy him that PAYE was accounted for in terms of moneys paid to him.

[8] The Authority discussed with Mr Butera the next step that it would take in the process. The Authority explained that it would write to the company at its address for service and copy the letter to Mr Bushe setting out what had been discussed during the telephone conference. The Authority indicated it would give Alliance Commerce Limited 14 days to make any comment before it proceeded to determine what was owing to Mr Butera by way of written determination.

[9] The Authority duly wrote to the company on 17 May 2011 setting out a record of the discussion had with Mr Butera. The Authority explained in its letter some of the difficulties in determining the gross earnings received by Mr Butera in relation to calculating the holiday pay owed to him. The Authority set out that Mr Butera said he had worked from 6 March 2010 to 22 February 2011 for the company which was just short of a full year. In those circumstances, Mr Butera is entitled to 8% of gross earnings less any holidays taken and the Authority understood that Mr Butera had not had any leave.

[10] The Authority explained in the letter that it did not have any clear record as to gross earnings and that it would have regard to the individual employment agreement entered into between the company and Mr Butera. The Authority set out that if it took the annual salary from the employment agreement of \$55,000 and divided that by 52, a gross figure was arrived at of \$1,057.69 per week. Given that Mr Butera stated he worked two weeks short of a full year, then \$1,057.69 multiplied by 50 equals \$52,885.61 gross which, when multiplied by 8%, equals \$4,240.77 gross holiday pay owing.

[11] The Authority asked the company to provide exact gross amounts paid to Mr Butera promptly and set out that Mr Butera was also claiming \$730 net for unpaid wages and a filing fee of \$71.56. The Authority gave the company until 31 May 2011 to comment on the claim. The letter advised that if there was no comment made the Authority would proceed to determine the matter after that date.

[12] Mr Gallen received an email from Mr Bushe dated 27 May 2011 responding to the letter of 17 May. Mr Bushe set out in his email amongst other matters that he and the director had been in contact with all employees since the earthquake, including Mr Butera, with updates. He explained that at the moment they were awaiting for the insurance company to process and finalise the claim so that final payments could be put through to ex-employees, including Mr Butera. Mr Bushe concluded his email with a contact number and email address if there were any further questions or comments.

[13] Because the email was only in general terms and did not address the claim made by Mr Butera, the Authority asked the senior support officer to email Mr Bushe asking for the gross earnings for Mr Butera during his employment at the restaurant. Mr Gallen asked for this information by the end of business Friday, 3 June 2011. No

response was received to that email and I now intend to proceed to determine the amounts owing to Mr Butera. I reserve leave for Alliance Commerce Limited to come back to the Authority with his gross earnings within a period of 14 days from the date of this determination and I will reassess, if necessary, the amount owing in terms of holiday pay.

### **Determination**

[14] I find Mr Butera is owed the following amounts by Alliance Commerce Limited:

- (i) \$730 net being unpaid wages;
- (ii) \$4,230.77 gross being holiday pay as calculated above; and
- (iii) \$71.56 being reimbursement of the filing fee.

[15] Subject to any reassessment of holiday pay in terms of para. 13 of this determination I order Alliance Commerce Limited to pay to Ivan Butera the sums set out above.

Helen Doyle  
Member of the Employment Relations Authority