

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA10A/09
5133650

BETWEEN KEVIN WAYNE CHANDLER
Applicant
AND PRIME PINE KAIKOURA
LIMITED
Respondent

Member of Authority: Helen Doyle
Representatives: Applicant self represented
Danny Smith Advocate for the respondent
Further information: 2 March 2009 from Applicant
9 March 2009 from Respondent
Determination: 1 April 2009

**DETERMINATION OF THE AUTHORITY
WITH RESPECT TO CALCULATION OF LOST WAGES**

[1] In my determination dated 28 January 2009 I found that Mr Chandler had a personal grievance that he had been unjustifiably dismissed from Prime Pine Kaikoura Limited. I left it to the parties to calculate three months lost wages taking into account the 60% contribution assessed. I reserved leave to return to the Authority if there were difficulties in that regard.

[2] Mr Chandler returned to the Authority and said that Prime Pine Kaikoura Limited (Prime Pine) calculated and paid him the lost wages on the basis of 40 hours of work per week. Mr Chandler said that his hours of work in the three months prior to his dismissal averaged 45-55 hours per week.

[3] I advised Prime Pine that Mr Chandler had returned to the Authority under clause 39 of the determination because he was not happy with the payment made to him of \$3,120 gross (\$2,421.12 net). I requested in the first instance that the

Authority be provided with a copy of Mr Chandler's wage and time records for the period of his employment.

[4] Prime Pine promptly complied with the request and provided the wage and time records, the methodology behind the payment to Mr Chandler and the part of the employment agreement that the company relied on. Mr Chandler was provided with copies of the documentation supplied to the Authority.

[5] Prime Pine paid Mr Chandler on the basis of clause 5 of his employment agreement which provided that Mr Chandler's ordinary hours would generally be worked between 7.30am and 5pm or as directed by his employer. The clause also provided that the ordinary hours shall not exceed 40 hours per week.

[6] My perusal of the wage and time records reflect that Mr Chandler worked nearly every week in excess of 40 ordinary hours. The hours in excess of 40 were recorded as overtime although did not attract a higher hourly rate. I find in those circumstances that the hours worked by Mr Chandler per week should be averaged out, so as to provide a fairer basis for calculating the lost wages. I do not find that it is appropriate in these circumstances to simply take the ordinary hours from the employment agreement.

[7] Prime Pine say they were willing to consider some movement in this regard but negotiations broke down. There is a difference in the parties views about that but it is appropriate now for the Authority to make a determination to bring finality to the issue.

[8] Mr Chandler was paid weekly. His hourly rate was \$15 per hour at material times. I have averaged out 33 pay periods from the time that Mr Chandler commenced employment on 10 May 2007 until the end of his employment in early April 2008. In undertaking this exercise I have not taken into account pay periods when there was a public holiday, sickness or a period when Mr Chandler was on holiday so as to achieve as accurate an average as possible.

[9] I have arrived at the average hours worked per week as 48 hours. I have no difficulty with the methodology used by Prime Pine in calculating the payment already made to Mr Chandler. Prime Pine provided two calculations which both arrived as the same result.

Determination

[10] I find that the hours on which a calculation should be based for Mr Chandler's lost wages is 48 hours. I have multiplied 48 hours by thirteen weeks, to arrive at a total number of hours of 624 hours. I have then multiplied 624 hours by \$15 per hour which was Mr Chandler's hourly rate. I have arrived at the sum of \$9,360.00 gross for thirteen weeks wages. \$9,360.00 less 60% (\$5616.00) is \$3,744.00 gross. Mr Chandler has already been paid the net of \$3,120.00 gross. He is therefore owed the sum of \$624.00 gross.

[11] I order Prime Pine Kaikoura Limited to pay to Kevin Chandler the sum of \$624.00 less tax, being lost wages calculated on 48 hours per week.

Helen Doyle
Member of the Employment Relations Authority