

[3] Mr Rakich, for the Applicant, said that the Respondent had not given an explanation for all the days she did not attend work during that period. Because wages were paid part way through a week, partly in advance and partly in arrears, pay was not deducted in that week for unauthorised leave taken. Although the Respondent had unexplained absences in the week before Christmas and during the holiday season, she was credited with three weeks pay for that period when she returned to work in the second week of January.

[4] Mr Rakich explained that the Applicant company had a 'culture' of allowing leave in advance because it had a clause in its standard employment agreement with staff – including the agreement signed by the Respondent – stating:

Where the employee has been allowed sick leave or Annual Holidays on pay in advance of the employee's entitlement under this agreement, the employee agrees to reimburse the employer in respect of the sick leave or annual holidays at the date of termination of the employee's employment.

Determination

[5] This matter falls outside the ambit of the Wages Protection Act 1983 ss 4 – 6 as it does not concern deductions from wages owed. Rather it is a matter concerning non-compliance by the Respondent with the term of her employment agreement requiring her to reimburse pay received for leave in excess of her entitlement. I am satisfied that the Respondent was paid for days on which she did not work, that payment for those days was made in good faith as if she were on leave, and that those payments were made in reliance on the employment term referred to earlier.

[6] The Applicant is entitled to an order requiring the Respondent to pay to it an amount equivalent to wages overpaid to her and for the amount owing on the staff account. After allowing for adjustment for leave entitlements, that the Respondent accepts are accurate, the amount owed is \$1058.16 for overpaid wages and \$38.43 for an unpaid staff account.

[7] The Applicant is also entitled to a reasonable contribution to its costs in making application for orders. Its evidence was that it incurred \$900 in legal fees related to pursuing the Respondent for payment. It had put the Respondent on notice

by letter of 4 February 2008 that it would seek costs if she did not make arrangement to repay the overpayments and an application to the Authority was necessary.

[8] Applying the relevant principles regarding exercise of the statutory discretion to award costs and the conventional 2:1 ratio based on meeting length, I consider that an award of \$500 costs is reasonable as a contribution to the Applicant's legal costs directly related to the Authority investigation for a meeting that took around one hour. The Respondent is also to reimburse the Applicant's lodgement fee of \$70.

[9] I discussed with Mr Rakich and the Respondent whether the amounts required to be paid by the Respondent should be paid by instalment. The Respondent is currently unemployed and relies on support from her boyfriend and her brother. However the Respondent advised that she would be able to meet any order to pay amounts for the overpaid wages and unpaid staff account as her mother had agreed to pay those amounts on her behalf. She is also the present owner of a relatively recent model car which she says was a Christmas present from her parents and is worth around \$30,000. In these circumstances I do not consider any order for payment by instalments is necessary.

Summary of orders

[10] Within 28 days of the date of this determination, the Respondent is ordered to pay to the Applicant the total sum of \$1666.59, comprising the following sums:

- (i) \$1058.16 in reimbursement of overpaid wages
- (ii) \$38.43 in payment of her staff account
- (iii) \$500 in costs; and
- (iv) \$70 in reimbursement of the Applicant's lodgement fee in the Authority.

Robin Arthur
Member of the Employment Relations Authority