

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 12
5351272

BETWEEN RODNEY CUMMINGS
Applicant

AND ELIZABETH RAM AND
DIJENDRA RAM
Respondents

Member of Authority: K J Anderson

Representatives: Rodney Cummings, In Person
Dijendra Ram, Advocate for Respondents

Determination: 16 January 2012

DETERMINATION OF THE AUTHORITY

The Claim

[1] Mr Cummings claims the net sum of \$3,983.56 from the respondents, Mr and Mrs Ram. Mr Cummings says that he was employed by Mr and Mrs Ram, as a courier, and that the period of employment was two years, four weeks and four days; from 5th January 2009 to 5th February 2011. Mr Cummings says that during that period of employment he took four days of annual leave in September 2010 and a further two weeks' holiday in January 2011. Given that the Holidays Act 2003 provides that an employee is entitled to four weeks' paid annual holidays after each completed 12 months of continuous employment, Mr Cummings claims that he is entitled to 8 weeks' annual holiday; less the two weeks and four days holiday that he acknowledges he has had. Mr Cummings also claims a sum equivalent to 8% of his earnings for a further part year worked; being four weeks and four days: plus interest and the filing fee paid to the Authority.

[2] The Authority has not received a statement in reply from the respondents. Following an unsuccessful mediation, a conference call was set down for 28th

November 2011 but the respondent's failed to participate. Mr Cummings was requested by the Authority to provide further and better particulars of the basis of his claim and he did so on 28th November 2011. This was couriered to the respondents on the same day and delivered and signed for by "BUP RAM" on 29th November 2011. Via a covering letter from the Authority, the respondents were notified that they should make any response within 14 days (by 13th December 2011) but nothing has been forthcoming.

Analysis and Conclusions

[3] Due to the fact that the respondents have failed to engage with the due processes of the Authority, I am left with the only evidence being that of Mr Cummings. And in the absence of any evidence to the contrary, I have no reason to doubt his version of events in regard to the basis of his claims, albeit his calculations have been amended.

[4] Mr Cummings says that he was paid the net sum of \$750 per week, after tax of \$150 was deducted. Mr Cummings worked Monday to Saturday inclusive and he acknowledges that he took a total of two weeks and four days as annual holidays during the two years of his employment. Therefore, for the two full years that he was employed, the annual holidays owing to him can be calculated as follows:

- (a) After two years' of continuous employment the entitlement to annual leave would be 8 weeks or 48 days (8 weeks x 6 days worked per week).
- (b) Mr Cummings has taken two weeks and four days holiday ($12 + 4 = 16$ days).
- (c) Therefore, there are 32 days of annual leave left owing to Mr Cummings (48 less 16).

[5] Mr Cummings has based his calculations on the sum of \$150 per day but given that it is a net sum that he is claiming, it seems to me that the calculations should be based on the net weekly amount of \$750 divided by six (Monday to Saturday) to arrive at a net amount of \$125 per day. Hence, the net sum owing to Mr Cummings is \$4,000.

[6] Then there remains the amount due for the partial year worked (four weeks and 4 days) or 28 days (4 x 6 + 4). At the net sum of \$125 per day, Mr Cummings would have earned the sum of \$3,500 and 8% of that is \$280. Therefore, the total net amount that Mr Cummings would have been entitled to is \$4,280.

[7] However, Mr Cummings says that on 12th February 2011, Mr and Mrs Ram paid him the net sum of \$750; hence the net amount owing is now \$3,530.

Determination

[8] The respondents, Mr Dijendra and Mrs Elizabeth Ram are ordered to pay to Mr Cummings, within 14 days of the date of this determination, the net sum of **\$3,530** plus interest at the rate of 5% p.a. from 22nd July 2011 until the above amount is paid in full. Mr Cummings is also entitled to be paid the sum of \$71.56 for the application fee paid to the Authority and it is so ordered.

K J Anderson
Member of the Employment Relations Authority