

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-Ā-TARA ROHE**

[2019] NZERA 440  
3034731

BETWEEN MICHELLE DAVIDSON  
Applicant

AND ROBERT HEMMINGSON  
Respondent

Member of Authority: Tania Tetitaha

Representatives: Kelly Coley, for the Applicant  
Respondent in person

Investigation Meeting: On the papers

Submissions Received: 2 and 15 July 2019 from the Applicant  
2 July 2019 from the Respondent

Date of Determination: 24 July 2019

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**DETERMINATION OF THE AUTHORITY**

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**A. Robert Hemmingson is ordered to pay Michelle Davidson the following amounts  
within 28 days of this determination:**

- a) **\$684.05 less PAYE for her alternative holidays not taken;**
- b) **\$1,085.36 less PAYE for holiday pay;**
- c) **\$2,350 contribution towards her legal representaives costs.**

### **Employment Relationship Problem**

[1] Michelle Davidson was successful in proving she had been unjustifiably dismissed by Robert Hemmingson. The issues of wage arrears and costs was adjourned.<sup>1</sup> Ms Davidson seeks \$6,367.65 in wage arrears and \$2,750 contribution towards her costs.

### **Wage arrears**

[2] No compliant wage record has been produced as directed. The evidence produced comprises a “wage record” includes some (not all) wage slips, two emails from Mr Hemmingson setting out what he believes were the hours worked and paid and IRD Summary of Income showing payment of \$13,567.

[3] Having heard from both parties, I do not accept Ms Davidson worked 89.1 hours on average per month. This is because the wages slips show she did not work any average amount of time. Her hours of work fluctuated substantially. From the evidence I accept Ms Davidson was also paid for all of the hours she worked. This is primarily because she received wage slips each week that recorded the hours worked and the amounts of pay. Further the complaints about the standard of her cleaning indicate towards the end of her employment less care and therefore hours were being spent on her job. Therefore no wage arrears arise.

[4] Ms Davidson seeks payment for Christmas Day 2017, a day she would have worked but did not but was not paid. She also seeks payment for the alternative day not taken for working New Years Day 2018 and Wellington Anniversary.

[5] Christmas Day 2017 fell on Monday 25 December. She would be entitled to receive her relevant alternative day. There is no dispute she worked New Years Day and Wellington Anniversary. Further the wage slips record her working on Boxing Day 2017, Day after New Years and Waitangi Day 2018. In short there are 6 alternative holiday days owed. There is no evidence these were taken or paid prior to termination.

[6] The wage records do not show the days Ms Davidson actually worked. As noted in my oral determination, Ms Davidson had a permanent part time position for three hours cleaning work every Monday, Thursday and Saturday and additional hours of work as a bar person as and when required. She was paid of \$17 per hour. I accept she worked Monday, Tuesday (as required for barwork), Thursday and Saturday (3 hours cleaning and barwork as

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<sup>1</sup> *Davidson v Hemmingson* [2019] NZERA 398.

required every second Saturday). Therefore she worked between 3 to 4 days per week. For calculation purposes I will attribute 3.5 days work per week. She worked a total of 34 weeks or 119 days.

[7] Therefore the relevant daily pay would have been \$95.93 based upon her pay received in the four weeks prior to termination. Her average daily pay would have been \$13,567 / 119 or \$114.01 per day. Given it is greater, the average daily pay applies. Therefore she is owed \$684.05 less PAYE for her alternative holidays not taken.

[8] Given the findings in the oral determination, she is also owed 8% of \$13,567 holiday pay or \$1,085.36 less PAYE.

### **Costs**

[9] As indicated to the parties, the starting point for costs awards is the Authority's notional hearing day tariff rate of \$4,500 for a one day hearing. This was a half day hearing given no briefs were required to be filed in advance. The starting point is therefore \$2,250. Ms Davidson seeks an uplift of \$500 for an earlier abandoned hearing. In my view \$100 is sufficient to recognise the inconvenience of attending Court.

### **Orders**

[10] Robert Hemmingson is ordered to pay Michelle Davidson the following amounts within 28 days of this determination:

- a) \$684.05 less PAYE for her alternative holidays not taken;
- b) \$1,085.36 less PAYE for holiday pay;
- c) \$2,350 contribution towards her legal representatives costs.

**TG Tetitaha**  
**Member of the Employment Relations Authority**