

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 467/10
5318395

BETWEEN DEBBIE DAWSON
Applicant

AND THE FAMILY CHILDCARE
COMPANY LIMITED
Respondent

Member of Authority: Robin Arthur

Representatives: Applicant in person
James Crawford for Respondent

Investigation Meeting: 1 November 2010 by telephone conference

Determination: 1 November 2010

DETERMINATION OF THE AUTHORITY

- A. Within 28 days of the date of this determination The Family Childcare Company Limited (TFCCL) is to pay to Debbie Dawson the sum of (i) \$2640 due to her as holiday pay; and (ii) \$31.21 due to her as interest on that amount for the period from 10 August to 1 November 2010; and (iii) interest of 37 cents a day from 2 November 2010 until the date of payment.**
- B. TFCCL is also to pay Ms Dawson \$70 in reimbursement of the fee for lodging her application in the Authority.**

Employment Relationship Problem

[1] Debbie Dawson sought orders requiring The Family Childcare Company Limited (TFCCL) to pay holiday pay due to her when she left her job with the

company on 9 August 2010 and repayment of \$2500 outstanding from a loan she had made to the company in July 2010.

[2] The matter of repayment of the loan is outside the jurisdiction of the Employment Relations Authority. While the loan was advanced by Ms Dawson to TFCCL during an employment relationship, it did not relate to or arise from it. In that sense it was similar to a loan that might have been made to TFCCL and its directors by a commercial organisation or a friend.

[3] There is some evidence, in the form of a copy of a handwritten note from TFCCL director Gillian Crawford confirming personal liability for the outstanding amount, which suggests there is no dispute on liability to repay the loan or the amount due. However if the repayment were now disputed, it would be a matter for the Disputes Tribunal to determine, not this Authority. If there is no dispute, debt recovery would need to be pursued through the standard civil procedures.

[4] In respect of the holiday pay, TFCCL director James Crawford, under affirmation, confirmed the company does not contest Ms Dawson's entitlement to the holiday pay. The holiday pay is due for Ms Dawson's work between 1 March and 9 August 2010 and amounts to 11 days' pay as her employment agreement provided for annual leave of 25 days a year. Mr Crawford accepted the entitlement was \$2640.00 gross as calculated on the basis of the information before the Authority.

Determination and orders

[5] TFCCL is required to pay the holiday pay of \$2640.00 due to Ms Dawson.

[6] It is also to pay interest on that amount of \$31.21 for the period from 10 August to 1 November 2010. From 2 November 2010 until the date of payment in full of holiday pay due, TFCCL is to pay further interest of 37 cents a day. The interest payments are calculated at the rate of 5.2 per cent (today's 90-day-bill rate plus two percent) under clause 11 of Schedule 2 of the Employment Relations Act 2000.

[7] Ms Dawson is also entitled to reimbursement of the \$70 fee for lodging her application in the Authority.

[8] The payments due to Ms Dawson are to be made within 28 days of the date of this determination.

Robin Arthur
Member of the Employment Relations Authority