

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 22/10
5276766

BETWEEN TARA DENHAM
 Applicant

AND ALI ALKHAFAJI T/A
 SYLVANA HAIR
 Respondent

Member of Authority: R A Monaghan

Representatives: T Denham in person
 No appearance for respondent

Investigation meeting: 19 January 2010

Determination: 19 January 2010

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Tara Denham says her former employer, Ali Alkhafaji t/a Sylvana Hair, owes her \$2,355.49 (gross) as unpaid holiday pay.

[2] Mr Alkhafaji filed a statement in reply denying that he was the employer, saying he was unable to make any payment, and making the broad allegation that Ms Denham had stolen product from his business.

Preliminary matter

[3] Mr Alkhafaji did not attend and was not represented at the investigation meeting. I am satisfied that Mr Alkhafaji was served with the statement of problem, and the notice of investigation meeting. He has not made any contact with the Authority regarding the reasons for his failure to attend, and the file records numerous approaches to him from the Authority, to which there was no response.

[4] Since Mr Alkhafaji has failed to show cause for his failure to attend or be represented, I proceed under clause 12, Schedule 2 of the Employment Relations Act 2000 to act in this matter as if he had attended or been represented.

The identity of the employer

[5] Despite Mr Alkhafaji's failure to participate in this investigation, I have addressed his assertion that he was not the employer.

[6] Ms Denham's employment began in January 2008. She was recruited by a manager on behalf of Mr Alkhafaji and his wife. Mr Alkhafaji's wife signed the parties' employment agreement, but Mr Alkhafaji worked in the business and was represented as the person in charge. Ms Denham's wages were paid from a bank account in the name of A Alkhafagi. The name on the account is an alternative spelling of Alkhafaji.

[7] Sylvana Hair & Beauty Limited was registered at the companies office on 3 April 2009. Mr Alkhafaji's wife is the sole director and shareholder. However the mere registration of the company did not amount to its replacement as the employer party to the employment relationship. Such a change could be made by agreement, but there was no evidence of any such agreement here. The relationship simply proceeded as before.

[8] I therefore conclude the company was not the employer party.

The claim for holiday pay

[9] Ms Denham's employment ended with her resignation on or about 14 May 2009. She did not receive her final holiday pay.

[10] Before filing this matter in the Authority, Ms Denham had approached a labour inspector at the Department of Labour. The records Ms Denham provided to the labour inspector included her payslips, and information indicating that on average she worked four days per week at some 33 hours per week. Four days' leave was taken during the first year of employment.

[11] The calculation of holiday pay outstanding was:

i. for the first full year of employment: -

gross daily pay: \$135.89

days' leave owed: 12

$12 \times \$135.89 = \$1,630.68$

ii. for the remaining part year of employment: -

total gross earnings: \$7,429.50

$8\% \times \$7,429.50 = \594.36

iii. adjustment under s 26 Holidays Act 2003

$\$1,630.68 \times 8\% = \130.45

[12] The above amounts total \$2,355.49 (gross). Ms Denham is entitled to interest on that amount.

[13] Accordingly I make the following order for payment.

Within 14 days of the date of this determination Mr Alkhafaji is ordered to pay to Ms Denham the sums of:

- i. \$2,355.49 (gross); and
- ii. Interest calculated at 4.8% pa from 14 May 2009 to the date of payment; and
- iii. Costs and witness expenses of \$98.

R A Monaghan

Member of the Employment Relations Authority