

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 267
5434719

BETWEEN BRUCE LESTER DOWNING
Applicant

A N D NUTRA FOODS (2011)
LIMITED
Respondent

Member of Authority: T G Tetitaha

Representatives: Applicant in person
T Le Sueur, Advocate for the Respondent

Investigation Meeting: 23 June 2013 by telephone

Date of Determination: 27 June 2014

DETERMINATION OF THE AUTHORITY

- A. Nutra Foods (2011) Limited is ordered to pay Bruce Lester Downing wage arrears pursuant to s.131 of the Employment Relations Act 2000 totalling \$1,480.00.**
- B. There shall be no order as to costs.**

Employment relationship problem

[1] This matter came before me by way of teleconference. The applicant, Bruce Lester Downing, seeks recovery of wage arrears being his final week's pay and 8% holiday pay calculated over the six weeks of his employment.

[2] This matter had been directed to mediation at a previous teleconference on 11 April 2014. This was unsuccessful.

[3] No statement of reply has been filed. I issued a Minute dated 4 June 2014 directing the respondent to file the applicant's wage, time and leave records by **3 pm on 18 June 2014**. I indicated to the parties this could be dealt with on the papers.

[4] The direction to file the wage, time and leave records has not been complied with. The respondent's agent, Terry Le Sueur, told me the company would not be taking any further steps, had agreed to pay the amounts owed and the applicant could "*f..k off*". He left the calculation of the final amounts up to me and asked that the Authority let him know. He told me he was busy and wished to end the teleconference to attend a meeting. I told him I would issue a wage arrears order in his absence. Mr Le Sueur told me he was fine with that and ended the call.

[5] The teleconference continued with Mr Downing only. He had been directed to file further evidence and his calculations of the amounts owed by **30 June 2014**. He told me there were no wage records or payslips. He had made enquiries with IRD and understood they held no record of PAYE having been paid either. The period of his employment was six weeks and he had the bank statements showing the amounts paid and could calculate the holiday pay owed as well.

[6] I directed Mr Downing to file copies of his bank account records for the six weeks he was employed showing how much he was paid each week and a calculation of how much he estimated he was owed. These have now been received.

[7] The respondent had raised an argument whether the amounts paid to Mr Downing were inclusive of holiday pay or not. Mr Downing told me he did not consent to any "*pay as you go*" system. He understood his pay was exclusive of holiday pay. The respondent's refusal to comply with the direction to provide Mr Downing's wage record must infer there is no evidential basis to support their assertion holiday pay was included within his salary.

[8] Mr Downing's bank records show deposits by the respondent of \$817.24 each week for the period 16 May to 14 June 2013. These are his net wages. He is seeking a \$1,000 gross wages for his last week's work. He would need to pay the PAYE owed on his last week's wages to IRD.

[9] He also seeks \$480 holiday pay being 8% of his gross wages of \$6,000.

[10] Given the above evidence and the respondent's consent to the Authority determining this matter in its absence, the Authority makes the following order:

- a) Nutra Foods (2011) limited is ordered to pay Bruce Lester Downing wage arrears pursuant to s.131 of the Employment Relations Act 2000 totalling \$1,480.00

[11] There shall be no order as to costs. The file shall be closed.

T G Tetitaha
Member of the Employment Relations Authority