

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2020] NZERA 153
3084513

BETWEEN KAREN GARDNER
 Applicant

AND SWIM LOVERS SCHOOL
 LIMITED
 Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in Person
 Respondent in Person

Investigation Meeting: On the papers

Information from the Parties: 19 December 2019 from Applicant
 21 January 2020 from Respondent

Date of Determination: 16 April 2020

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Karen Gardner worked for Swim Lovers Swim School Limited (Swim School) for around 12 years. She resigned on 24 April 2019 due to her weekly wages being constantly in arrears, sometimes for up to five weeks at a time.

[2] Ms Gardner is still owed wage arrears of \$1,509.40, consisting of unpaid holiday pay. She seeks an order that Swim School pay her that amount.

[3] Swim School admits to the wage arrears but says it has not paid Ms Gardner because it was having cashflow problems. Swim School has had almost a year since Ms Gardner's employment ended to address its cashflow problems.

[4] Ms Gardner is entitled to be paid her holiday pay arrears without further delay. As the successful party Ms Gardner is also entitled to recover her \$71.56 filing fee from Swim School.

[5] Accordingly, within 30 days of the date of this determination Swim School is ordered to pay Ms Gardner \$1,580.96 consisting of \$1,509.40 wage arrears plus \$71.56 to reimburse her filing fee for this application.

[6] If Swim School fails to pay Ms Gardner \$1,580.96 within 30 days of the date of this determination then Ms Gardner may apply to the Authority for a compliance order.

[7] If Swim School defaults on paying Ms Gardner what she has been awarded in this determination, then Ms Gardner is granted leave under s 142Y(2)(a) of the Employment Relations Act 2000 (the Act) to apply to the Authority under s 142Y(1) of the Act to recover from Swim School's sole director and shareholder Jean Rheinfrank the money that is owed.

[8] This leave has been granted on the basis that Swim School's failure to pay Ms Gardner's holiday pay she is owed is a breach of employment standards, and Ms Rheinfrank was a person involved in the breach by Swim School under s 142X of the Act.

[9] Ms Gardner will need to file a new Statement of Problem if she needs to pursue further Authority claims against Swim School for compliance and/or Ms Rheinfrank to pay the money that Swim School has defaulted on paying.

Rachel Larmer
Member of the Employment Relations Authority