

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 192/08
5136715

BETWEEN JONATHAN HAMILTON
 Applicant

AND WAYNE MONASTRA
 Respondent

Member of Authority: James Crichton

Representatives: Jonathan Hamilton in person (by telephone)
 No appearance by respondent

Investigation Meeting: Interview with applicant 26 November 2008 at
 Christchurch. No arrangement by respondent to be
 interviewed.

Determination: 12 December 2008

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Mr Hamilton) was employed from April 2008 for a total period of twelve weeks as a waiter and bartender at a Christchurch restaurant called the Stromboli Restaurant.

[2] There was never a written employment agreement between the parties and Mr Hamilton's evidence was that he struggled to get paid his agreed remuneration. That agreed remuneration was at a rate of \$500 per week net for the first six weeks of the employment relationship and then reduced thereafter for the subsequent six weeks to a rate of \$400 net per week.

[3] Mr Hamilton alleges that he is owed one weeks wages (at the lower rate of \$400 net per week) together with holiday pay on the total earnings during the employment relationship. Mr Hamilton resigned his employment on 21 July 2008 having found a better paying and more secure position elsewhere and he does not allege any personal grievance.

[4] The respondent (Mr Monastra) has declined to participate in the Authority's process except to the extent of emailing the Authority's support officer and confirming that staff were owed wages by him. I am satisfied that Mr Monastra has been given every reasonable opportunity to engage with the Authority's investigation and has chosen not to do so.

Determination

[5] I spoke to Mr Hamilton by telephone and accordingly, his evidence is not sworn evidence. However, I am satisfied that what he told me was truthful and his story is absolutely consistent with that given by another employee of the same employer, who has also brought a claim against Mr Monastra, which I also have to determine.

[6] There is no suggestion by Mr Monastra, nor any evidence to suggest that Mr Hamilton's employer was anyone other than Mr Monastra personally. Mr Monastra is the owner of all the shares and the sole director of a company incorporated as Volcano Group Limited but I am satisfied that Mr Hamilton was employed by Mr Monastra.

[7] I am also satisfied from the evidence before me that Mr Hamilton is owed one weeks wages at the lower rate of pay, that is \$400 net, plus holiday pay on the total earnings for the employment.

[8] Accordingly, I direct that Mr Monastra is to pay to Mr Hamilton the following sum to remedy Mr Hamilton's arrears of wages:

- (a) A gross sum of \$500 being one weeks unpaid wages; and
- (b) Holiday pay on the total earnings of the employment, which I determine at a further amount of \$540 gross;
- (c) Reimbursement of the \$70 filing fee.

Costs

[9] Costs are to lie where they fall.

James Crichton
Member of the Employment Relations Authority