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Harding v Citisprint Couriers (HB) Limited (Wellington) [2016] NZERA 282; [2016] NZERA Wellington 81 (11 July 2016)

Last Updated: 29 November 2016

IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

[2016] NZERA Wellington 81
5620550

BETWEEN AIMEE MARIE HARDING Applicant

AND CITISPRINT COURIERS (HB) LIMITED

Respondent

Member of Authority: M B Loftus

Representatives: Aimee Harding, on own behalf supported by Nicole Harding Nil for Respondent

Investigation Meeting: 11 July 2016 at Napier Submissions Received: At the investigation meeting Determination: 11 July 2016

ORAL DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant, Aimee Harding, seeks to recover unpaid wages and holiday pay along with interest.

[2] The respondent, Citisprint Couriers (HB) Limited (Citisprint), has failed to participate in the Authority's process so its position is unknown.

Non-appearance of the Respondent

[3] Citisprint was neither present nor represented at the investigation meeting. That raised the question of whether or not I proceed in its absence.

[4] All companies are required to have an address for service.¹ In this instance the notified address is 27 Austin Street, Onekawa, Napier. That address is also Citisprint's registered office and is occupied by an accounting firm. I am aware from staff of that firm the Authorities documents have been properly served at the address though there are difficulties in forwarding them to Citisprint's principles.

[5] Given the provisions of the Employment Relations Authority Regulations

2000 I conclude the documents have been properly served. ² The accountant's inability to forward the documents to Citisprint does not, in my view, detract from that. It is Citisprint's duty to ensure its address for service is operable and it cannot avoid its responsibilities by hiding. I note copies of the Authority's documents have also been sent to the residential address, as recorded by the Companies Office, of Citisprint's sole director and shareholder, Noel Solomon. A copy of the notice of investigation meeting was also sent to Citisprint's e-mail address which is known to the Authority as a result of previous dealings.

[6] The notice of investigation meeting contains advice that should the respondent fail to attend the Authority may proceed and issue a determination in favour of the applicant.

[7] In the circumstances I conclude it reasonable to proceed. Ms Harding is entitled to have her claim determined.

Determination

[8] Ms Harding was employed by Citisprint between 13 July and 14 December

2015. She was paid \$480 net a week. There were no problems for the first months.

[9] Citisprint failed to pay Ms Harding for the week ended 16 October. Having discussed this with her employer Ms Harding concluded it a rectifiable glitch and continued working. The failure to pay was, however, repeated over the following weeks though there were some contributions toward the amount owed which kept Ms Harding mollified until 18 December when she decided enough was enough and resigned. She received no holiday pay.

[10] Ms Harding says she is still owed \$3,915 net.

[11] Citisprint's absence allows me to simply issue a determination in Ms Harding's favour without obtaining further information.³ That said I had an opportunity to question Ms Harding. I found her a credible witness who supported her claim with relevant documentation.

[12] I conclude she is owed the amount sought and will order payment accordingly.

[13] Ms Harding also seeks interest. Interest is to reimburse someone for use, by others, of money that is theirs. There can be no doubt Citisprint has, by failing to make payments properly due, continued to have use of money rightfully belonging to Ms Harding. This is, I conclude, a circumstance in which interest should be payable, especially in the absence of a contrary argument. The current rate is 5%.⁴

[14] The outstanding amounts were payable on various dates. Having reviewed the information before me I conclude that as of the date of this determination the interest payable is \$126.57. That will increase by 54 cents for each day which passes between the date of this determination and payment.

[15] Finally there are Ms Harding's costs and in this respect she seeks reimbursement of the Authority's filing fee of \$71.56. As she has been successful I conclude it appropriate she be recompensed accordingly.

Conclusion and costs

[16] For the reasons above I conclude Ms Harding is owed the amounts claimed. [17] Citisprint Couriers (HB) Limited is therefore ordered to pay to Ms Harding:

(a) \$3,915.00 (three thousand and nine hundred and fifteen dollars) net for unpaid wages and holiday pay. In addition Citisprint is to calculate the PAYE owing on that amount and forward it to the Inland Revenue Department; and

(b) A further \$126.57 (One hundred and twenty six dollars and fifty seven cents) being interest owing as at the date of this determination. This will increase by \$0.54 (fifty four cents) with each calendar day that passes between 11 July 2016 and the date of payment; and

(c) A further \$71.56 (seventy one dollars and fifty six cents) as a

contribution towards Ms Harding's costs.

[18] The above payments are to be made, in full, no later than 4.00pm on Monday

1 August 2016.

[19] In closing I caution Citisprint that failure to comply with the above orders may result in further consequences including, but not limited to, the imposition of fines and/or the sequestration of property.

M B Loftus

Member of the Employment Relations Authority