



New Zealand Employment Relations Authority Decisions

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Heagren v Hard Left Limited (Christchurch) [2017] NZERA 1149; [2017] NZERA Christchurch 149 (7 September 2017)

Last Updated: 13 September 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

[2017] NZERA Christchurch 149
3007651

BETWEEN KENNETH ARTHUR HEAGREN Applicant

AND HARD LEFT LIMITED Respondent

Member of Authority: Helen Doyle

Representatives: Kenneth Heagren in person

Debby Deaker, Advocate for Respondent

Further Information received: 30 August and 1 September 2017

Determination: 7 September 2017

SECOND DETERMINATION OF THE AUTHORITY

A. I order Hard Left Limited to pay to Kenneth Arthur Heagren the sum of \$423.08 gross for payment for working on public holidays and one alternative day.

B. I order Hard Left Limited to pay to Kenneth Arthur Heagren the sum of \$103.58 net being the balance owing for holiday pay.

The substantive determination

[1] In my substantive determination dated 11 August 2017¹ there were two matters that required provision of further information and failing resolution further determination by the Authority.

[2] The first is an issue about what anniversary date was observed by Hard Left Limited (Hard Left) in order to calculate public holiday and alternative day payments. To assist the parties the Authority set out three scenarios and an amount owing in each for public holiday and alternative day payments. Hard Left did not respond within the timeframe set out in the determination to confirm the anniversary day observed. Mr Heagren wrote in an email to the Authority that the only scenario that “comes close to the truth” is scenario two.

[3] The second issue is whether Mr Heagren was paid correctly for holiday pay. Although asked for in the substantive determination no information was supplied by Hard Left about any amount paid in advance to Mr Heagren for annual holidays. Mr Heagren in an email to the Authority said that he had one day off for a job interview which was paid although he wrote that was usual for salary workers. Mr Heagren provided his Inland Revenue records which enabled the Authority to calculate gross earnings.

Public holidays and alternative days

[4] Mr Heagren says of the three scenarios provided the most accurate is scenario two. I accept in the absence of any response from Hard Left orders should be made on that basis.

[5] Scenario two in the substantive determination² provides that the sum of \$423.08 gross is owing for payments for working on two public holidays and one alternative day in lieu.

[6] I order Hard Left Limited to pay to Kenneth Arthur Heagren the sum of \$423.08 gross for payment for working on public holidays and one alternative day.

Holiday Pay

[7] The substantive determination provides that the Authority was unclear whether Mr Heagren received his correct holiday pay. The Authority was able to conclude from a net sum of \$1605.42 paid on 5 December 2016 to Mr Heagren that \$828.19 was payment for hours worked and \$777.23 for holiday pay³.

² Above n 1 at [29]

[8] Mr Heagren's gross earnings from Hard Left are \$15990. 8% of \$15990 is \$1279.20. It is appropriate to deduct from that sum one day's payment for the paid leave Mr Heagren took. A daily rate in the substantive determination was calculated as \$211.54 gross⁴. The balance after deduction of \$1279.20 is \$1067.66 gross.

[9] The calculation of the net of that sum could be problematic but for present purposes I have done so on the basis of 17.5% tax taking into account the gross earnings and the tax rate on amounts over \$14000 and up to \$48,000.

[10] Mr Heagren is owed \$880.81 net for holiday pay. He was paid \$777.23 net. That leaves a balance due and owing for holiday pay in the sum of \$103.58 net.

[11] I order Hard Left Limited to pay to Kenneth Arthur Heagren the sum of \$103.58 net being the balance owing for holiday pay.

Helen Doyle

Member of the Employment Relations Authority