

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 54/09
5135109

BETWEEN BERNARD JOYCE
 Applicant

AND BRUCE COTTON T/A
 EMERSON BREAKDOWN
 SERVICE
 Respondent

Member of Authority: Dzintra King

Representatives: David Law, Advocate for Applicant
 No appearance by Respondent

Investigation Meeting: 18 February 2008

Determination: 18 February 2008

DETERMINATION OF THE AUTHORITY

EMPLOYMENT RELATIONSHIP PROBLEM

[1] The applicant, Mr Bernard Joyce, says he has been unjustifiably dismissed by the respondent, Mr Bruce Cotton trading as Emerson Breakdown Service. Mr Joyce says he has not been paid holiday pay. He also claims one week's wages in lieu of notice and an additional three weeks' pay.

[2] The respondent has not filed a Statement in Reply and although a Direction to Mediation was issued has failed to make himself available for mediation.

[3] The respondent did not attend the Investigation Meeting. This decision is based upon the evidence given by the applicant.

Background

[4] Mr Joyce was employed in April 2005 as a Breakdown Service Technician. There was no written employment agreement. Mr Joyce was initially paid \$500 net per week plus \$10 for each after hours call out. In 2006 this was increased to \$600 per week and \$15 per after hours call out.

[5] Mr Joyce heard rumours that the AA was going to terminate its contract with Mr Cotton but nothing was said directly to him. He telephoned his employer on a number of occasions to chase up his wages and was not told to worry, it was just a quiet period.

[6] On 24 July 2008 he phoned Mr Cotton regarding his wages and was told that he no longer had a job and had been given notice two weeks prior. Mr Joyce said that at no stage was he given notice. Mr Joyce was not given any instructions regarding the company vehicle he was in possession of. Mr Joyce said his last AA job had been on 18 July.

[7] Mr Joyce has requested his time and wages records but these have not been supplied. He is unsure how much annual leave he took during his period of employment as he has no records himself. He is sure he is owed at least four weeks totalling \$2,400.

Decision

[8] Mr Joyce is to be paid four weeks' annual leave. The respondent is to pay the applicant the sum of \$2,400.

[9] Mr Cotton is also to pay Mr Joyce the sum of \$2,400 being one week's pay in lieu of notice and three weeks' lost remuneration.

[10] The respondent is to pay the applicant the sum of \$4,000 as compensation for humiliation and distress pursuant to s 123 (1) (c) (i) Employment Relations Act 2000.

Costs

[11] Mr Joyce has incurred costs of \$1,250. These are reasonable and the respondent is to pay Mr. Joyce the sum of \$1,250 costs plus the \$70 filing fee.

Dzintra King

Member of the Employment Relations Authority