

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 317/08
5127209

BETWEEN SEUNG IL KIM
Applicant

AND MICHEL'S PATISSERIE NZ
LIMITED
Respondent

Member of Authority: Robin Arthur

Representatives: Applicant in person
 No appearance for Respondent

Investigation Meeting: 3 September 2008 at Auckland

Determination: 3 September 2008

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant seeks orders for payment of wages for the period from 18 April to 1 March 2008 and holiday pay for which he became entitled through his last eight months of work for the Respondent.

[2] The Respondent did not reply to the application. Courier records confirm that both the statement of problem and the Notice of Investigation Meeting were delivered to and signed for at the Respondent's registered office and its business premises.

[3] At the notified time of the Investigation Meeting there was no appearance for the Respondent. I had an officer of the Authority telephone the Respondent's business premises where she was given a mobile phone number for the Respondent's director, Tony Safar. The officer reported to me that, by telephone, Mr Safar advised that he would not attend the meeting and acknowledged money was owed to the Applicant.

Wages and holiday pay owed

[4] In the absence of a statement in reply or any contrary evidence from the Respondent, I accept, in full, the sworn and unchallenged evidence of the Applicant, given with the assistance of a Korean interpreter, regarding wages and holiday pay owed to him by the Respondent.

[5] The Applicant is owed wages for 90 hours worked over the period claimed. His pay rate was \$18 an hour. The amount due in wages is \$1620 less any applicable PAYE.

[6] The Applicant has not been paid for leave entitlements accumulated in the last eight months of work. In the absence of any wage or leave records from the Respondent I assess the Applicant's annual leave entitlement as being the equivalent of 13.3 days. On the basis of his hourly rate and an eight hour day, the value of this leave entitlement is \$1915.20.

[7] From the Applicant's total entitlement for outstanding wages and holiday pay of \$3535.20 (less any applicable PAYE) must be deducted a part payment of \$200 made to him by the Respondent in May 2008.

Orders

[8] **The Respondent is ordered to pay to the Applicant within 14 days of the date of this determination, the following amounts in full:**

- (i) **\$3335.20 (less any applicable PAYE) for outstanding wages and holiday pay; and**
- (ii) **\$70 in reimbursement of the Applicant's fee for lodging this matter in the Authority.**

[9] A certificate of determination is to be issued with this determination.

Robin Arthur
Member of the Employment Relations Authority