

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 44/09
5147072

BETWEEN ARTHUR LANGTON
 Applicant

AND SENSATION YACHTS
 LIMITED
 Respondent

Member of Authority: Vicki Campbell

Representatives: Applicant in Person
 No appearance for Respondent

Investigation Meeting: 12 February 2009

Determination: 12 February 2009

DETERMINATION OF THE AUTHORITY

[1] Mr Langton was employed by Sensation Yachts Limited (SYL) until 22 December 2008.

[2] In his statement of problem, lodged in the Employment Relations Authority on 18 December 2008 Mr Langton says he is owed outstanding wages, and holiday pay by SYL.

[3] No statement in reply was received from the Respondent. In a memorandum dated 3 February 2009 the Respondent was advised that the matter had been set down and reminded that should it attend the investigation meeting it would require leave to reply or respond to Mr Langtons' application. The Notice of Investigation Meeting sets out the consequences for the Respondent if it does not attend the investigation meeting.

[4] As at the scheduled commencement time for todays investigation meeting, no representative of SYL was present. I am satisfied SYL received the notice of

investigation meeting. The Authority attempted to contact Mr Ivan Erceg but was unsuccessful.

[5] SYL has not shown good cause for its failure to appear or be represented. After waiting for 20 minutes in the off chance that the respondent had been held up in traffic, I proceeded under clause 12 of Schedule 2 to the Employment Relations Act 2000 to hear and determine the matter as if SYL had attended or been represented.

Arrears of Wages Claim

[6] On 18 November 2008 Mr Langton was instructed to take one weeks leave, returning to work on 26 November 2008. On 27 November Mr Langton was advised that SYL had been unable to pay his wages for the two preceding weeks as a result of a significant down turn in economic conditions.

[7] At the investigation meeting Mr Langton advised me that he received payment for the period ending 16 November 2008 on 12 December. However, he had not been paid for the pay periods ending 23 and 30 November and that he had also not been paid for any of the hours he worked during December.

[8] Mr Langton gave evidence that he had worked at least 2 hours each day throughout December up to and including 22 December 2008. Mr Langton was paid at the hourly rate of \$24.16 per hour. I am satisfied Mr Langton has made out his claim for outstanding wages of \$2,804.09 gross.

[9] On 17 November Mr Langton was instructed to take annual leave for the period 18 to 26 November. His leave balance was reduced accordingly. The instruction to take the leave was unfair and unreasonable. There was no consultation with Mr Langton prior to the instruction being given and the one days notice was insufficient.

[10] Mr Langton is entitled to receive payment for his holiday pay to which he had become entitled at the end of the employment relationship. I have calculated Mr Langton's holiday pay on the basis of 8% of his gross earnings. Mr Langton is entitled to \$2,881.18 in outstanding holiday pay.

Orders

- **Sensation Yachts Limited is ordered to pay to Mr Langton, within 14 days of the date of this determination, the sum of \$5,685.27 gross being unpaid wages and holiday pay, pursuant to section 131 of the Employment Relations Act 2000.**
- **Mr Langton is entitled to reimbursement of the Authority's filing fee of \$70.00. Sensation Yachts Limited is ordered to pay him that amount within 14 days of the date of this determination.**

Vicki Campbell
Member of Employment Relations Authority