

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 79/10  
5290027

BETWEEN                      STACEY LEITCH  
Applicant

AND                              AMY YANDLE AND BLACK  
CHERRY LTD  
Respondents

Member of Authority:      P R Stapp

Representatives:            Carlene Leitch for Applicant  
No appearance and no representation for the  
Respondents

Investigation Meeting:     27 April 2010 at Wellington

Determination:              27 April 2010

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]      Stacey Leitch has claimed that her employment relationship problem is about unfair dismissal, a concern about the failure of the employer to remit deductions to the Ministry of Justice and Inland Revenue that were required to be deducted from her pay under the terms of an Attachment Order and PAYE, respectively.

[2]      Also, she claimed that she was not paid before taking maternity leave and her final pay was incorrect. She has claimed that she is owed \$289.25 wages for hours worked and not banked and \$3,228.53 holiday pay.

[3]      There has been no statement in reply filed by the respondents.

**No appearance by the respondents**

[4] Upon the commencement of the investigation meeting I requested the support officer to try and make contact with the respondents because they had failed to appear. The support officer did make contact with Amy Yandle and I am satisfied she knew about the matter and had been served with the relevant documents. She informed the support officer that she would not attend the Authority's investigation meeting.

[5] There has been no good cause for the non appearance of the respondents and non attendance of a representative for the respondents. I am satisfied the respondents were served with all the documentation on the employment relationship problem, outlining the claims, and the Authority's minute, requesting wage and time and holiday records and the employment agreement.

[6] In the absence of any good cause for failing to attend and or be represented at the Authority's investigation meeting I decided to proceed fully in the matter as if the respondents had attended and been represented (see clause 12 of Schedule 2 of the Employment Relations Act 2000).

**The issues**

[7] Does the Authority have any jurisdiction on Ms Leitch's concerns on the deductions that were required to be made to her pay by MOJ and IRD?

[8] What is the correct amount for Ms Leitch's final pay, and how much is she entitled to?

[9] Is there any holiday pay owed?

**The facts**

[10] Stacey Leitch was employed by Black Cherry Limited trading as "*Getfunkd*" under an employment agreement (Apprenticeship Training Contract). She informed me that she had signed an employment agreement, and that her employer under that agreement was Black Cherry Limited, but that she did not keep a copy of the

agreement. She claimed she started work in September 2007 as a full time apprentice hairdresser. Despite requests from Ms Leitch's lawyer for wages time and holiday records and the employment agreement from the respondents they have not provided any documents. Nor have the respondents filed a statement in reply in the time required and the opportunity available to them before the Authority's investigation meeting. The respondents have flagrantly ignored their responsibilities and the directions of the Authority. The respondents have failed to co-operate and failed to assist the Authority and are entirely responsible for the mess.

[11] Ms Leitch says she was entitled to \$289.25 wages and \$3,228.53 holiday pay. At the time her employment ended she was paid \$13 per hour and worked 40 hours per week. Her pay was not regularly paid into her bank on time and it is accepted that an initial claim for three weeks pay appears to have been paid in subsequent payments by the respondents. An Attachment Order dated 24 September 2008 from the Ministry of Justice (MOJ) applied to her wages, and deductions were made.

[12] Ms Leitch became ill during her employment and she went on sick leave from 5 November 2009 until her maternity leave was due to start on 30 November 2009. Her last pay period was the week ended 7 November 2009. There are details of her being paid until the week ended 7 November 2009 and payments banked on 26 November and 8 December 2009. She is still on parental leave.

### **Determination**

[13] There is no jurisdiction for the Authority to resolve the concerns Ms Leitch has on deductions required to be made to her wages under the terms of the Attachment Order from the MOJ, and whether or not the correct PAYE has been remitted to Inland Revenue. These are matters between the MOJ and IRD and the employer. I am not concerned about the PAYE, which is the responsibility of the IRD. However, the deductions made to the wages under the Attachment Order are permitted having regard to:

- (i) The Wages Protection Act is required to be read subject to the provisions of any other Act pursuant to s 15.

- (ii) *Meenken v Rigg Zschokke Ltd & Or* (unreported) Colgan CJ 16 November 2009 WC 25/09 considered the principle in regard to deductions and the application of the Wages Protection Act.

[14] I am not able to remedy Ms Leitch's concerns about the deductions the employer was required to make. It is my conclusion that I am not able to make a recovery order on the deductions. The employer's responsibility for making deductions under the Attachment Order is another matter and any enforcement on an employer's default in making the payment on the charge is a matter between the employer and the Crown because the payment becomes a debt due by the employer to the Crown: Section 106 (5) of the Summary Proceedings Act.

[15] Ms Leitch has attempted to calculate her final pay for hours worked and not paid into her bank by the respondents, and she has claimed \$289.25 wages. In the absence of any wages time and holiday records I accept that sum.

[16] There can be no issue on the claim in the statement of problem for unfair dismissal because no personal grievance was properly raised at the time to put the employer on notice of a claim and how to resolve it. Indeed Ms Leitch's lawyers acting for her at the time, and who wrote on her behalf to the business asking for documentation relating to pay, annual leave, sick leave, deductions and a copy of the employment agreement, never referred to any dismissal matter. Mrs and Ms Leitch informed me that their focus is on the pay and holiday pay claims.

[17] I am satisfied that Ms Leitch is owed her Holiday pay as claimed. It was supported by calculations from the documents available including a pay slip with holiday pay due, and because there is no wage time and holiday records and the respondents have failed to attend the Authority's investigation and not filed a statement in reply, I accept the applicant's claim. In other words I accept Ms Leitch's evidence on her claim for the entire amount of holiday pay.

### **Orders of the Authority**

[18] Black Cherry Limited trading as "*Getfunkd*" is to pay Stacey Leitch \$289.25 wages and \$3,228.53 holiday pay.

[19] In addition, Black Cherry Limited trading as “*Getfunkd*” is to pay Stacey Leitch the filing fee of \$70.

[20] Leave is granted to Stacey Leitch to return to the Authority on her wages claim if any further issues arise, and/or she is able to better quantify any sum owing for any variation if it is necessary.

P R Stapp  
Member of the Employment Relations Authority