

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 194/09
5273519

BETWEEN HELEN MARIE LONG
 Applicant

AND RON SPIERTZ AND
 CHRISTINE SPIERTZ
 Respondent

Member of Authority: Helen Doyle

Statements received 21 October 2009 from applicant
 5 November 2009 from respondent

Determination: 12 November 2009

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Helen Long says that she is owed holiday pay and three weeks payment in lieu of notice of redundancy. Ms Long also seeks reimbursement of her filing fee of \$70. Ms Long said in her statement of problem her employer's business (a gym centre) closed without notice on 10 June 2009 and that she was advised of this by a work colleague. Although Ms Long says she received her final pay on 12 June 2009, it did not include any holiday pay.

[2] Ms Long did not hear from her employers as to what had happened with the business and she emailed them on 13 June 2009. Although Ms Long received a response to the effect that they would be in contact with her shortly, she did not hear from them until she emailed them later in June 2009 with a suggestion of mediation. She received a response from Mr Spiertz that there was no money to pay her holiday pay and they were trying to sell equipment and would hopefully be in a position to settle what was owed.

[3] I am satisfied that the application was served on Ron Spiertz and Christine Spiertz but no statement in reply was received within the required 14 day period. A

support officer wrote to the respondent advising that the Authority wished to hold a telephone conference on 8 September 2009 at 11.30am. Shortly before that telephone call was due to take place an email was received from Mr Spiertz advising that he would not be taking the call from the Authority as the company was not in a position to settle the outstanding money.

[4] The Authority talked to Ms Long and the investigation was undertaken as set out below.

The investigation

[5] Following the telephone conference with Ms Long on 8 September 2009 the Authority was able to identify two issues that required to be dealt with.

[6] The first issue was that of the correct identity of the respondent. Ms Long had provided the Authority with a full copy of her employment agreement. The employer party to the signed employment agreement was described as Timaru WOMAN Studio Weight Loss & Fitness for WOMEN, SPIERTZ Investments Limited, Ron & Christine Spiertz, the “Employer”. The same employer was repeated at the declaration at clause 15.1 of the agreement which provided:

I, Timaru WOMAN Studio Weight Loss & Fitness for WOMEN, SPIERTZ Investments Limited, Ron & Christine Spiertz, offer this employment agreement to Helen Long.

[7] The employment agreement was signed by both parties on 3 December 2008. The Authority set out in a notice in direction to the application and respondent that it considered from the employment agreement the named employer parties with the exception of the Timaru Woman Studio Weight Loss & Fitness for Women which is not a legal entity would be jointly and/or severally liable for money owing to Ms Long and that the liability was not simply that of the company. Mr and Mrs Spiertz were advised that if there was a different view they should let the Authority know.

[8] The second issue was that Ms Long had not set out the amount that she was seeking in terms of holiday and for payment in lieu of notice. The Authority asked in its notice of direction for the wage and time records to be provided within 14 days from the date of the directions notice, failing which the Authority advised it would simply calculate the amount owing to Ms Long as best it could on the information available.

[9] There was no response to that notice of direction from Mr and Mrs Spiertz and the wage and time records were not provided. The Authority set out in the notice of direction that once the wage and time records had been provided, then it would write further to the parties with an assessment of the amount Ms Long claimed and how in the absence of payment it intended to deal with the claim. The Authority also noted that Ms Long claimed reimbursement of the filing fee of \$70.

[10] In the absence of any response from Mr and Mrs Spiertz, the Authority received details from Ms Long as to the gross amounts shown on her payslip each week and the hours worked for each week from the commencement of her employment in October 2008 through to her last week ending 9 June 2009.

[11] On the basis of the figures provided by Ms Long the Authority calculated that she was owed the following:

Holiday Pay	\$582.84 gross
Payment for 3 weeks in lieu of notice	\$650.01 gross

[12] The Authority provided a further Minute dated 2 November 2009 to both the applicant and respondent setting out those amounts and the basis for those figures. The Authority said in its Minute that the respondent had until 4pm Monday 9 November 2009 to pay the sums set out above to Ms Long or advise the Authority they do not consider the figures are correct. The Authority confirmed that if no response has been received within that timeframe then it would proceed to make a determination about the amount owing to Ms Long, which would then be enforceable.

[13] The support officer then received an email from Mr Spiertz on 5 November 2009 which provided:

We seem to have misplaced the information regarding the claim Helen Long had filed against Timaru Woman so from memory of what was in the statement the only issue we have is as follows. We have no dispute over the amount that is owed to Helen. However Helen is mistaken in the fact that she was employed by myself and Christine Spiertz personally. Helen was employed by Spiertz Investments Limited trading as Timaru Woman and is owed the money by this company and not us personally. Spiertz Investments Limited is not in a position to settle this amount, there are no company funds or assets and this position will not change.

...

Ron Spiertz

[14] There is no dispute about the money owing to Ms Long but an issue about the identity of the respondent. Mr and Mrs Spiertz are named clearly as the employer in the employment agreement along with the company. Mr and Mrs Spiertz are directors of Spiertz Investments Limited and given the clarity in which the employer parties are set out I find that it is less likely this was a mistake. I find that as Ron and Christine Spiertz are named in the employment agreement as employers, they are severally and jointly liable for money owed to Ms Long. Ms Long has named Ron and Christine Spiertz in her statement of problem and I find that she is entitled to look to them for payment under her employment agreement.

Determination*Holiday pay*

[15] I order Ron and Christine Spiertz to pay to Helen Long holiday pay in the sum of \$582.84 gross.

Payment in lieu of notice

[16] I order Ron and Christine Spiertz to pay to Helen Long three weeks pay in lieu of notice under clause 11 of her employment agreement in the sum of \$650.01 gross.

Filing fee

[17] I order Ron and Christine Spiertz to pay to Helen Long the sum of \$70 being reimbursement of her filing fee.

Helen Doyle
Member of the Employment Relations Authority