

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2015] NZERA Auckland 385  
5542912

BETWEEN

TREVOR JOHN  
LOVEGROVE  
Applicant

A N D

PC EXCHANGE LIMITED  
Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in person  
Brain Gibbons Director of Respondent

Investigation Meeting: 08 December 2015 at  
Auckland

Written Record of Oral Determination: 08 December 2015

---

**DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY**

---

**Employment relationship problem**

[1] Mr Lovegrove was employed by PC Exchange Limited (PCE) from August 1992 until 16 January 2015.

[2] Neither party could tell the Authority the date on which Mr Lovegrove started work. The parties therefore agreed during the Authority's investigation meeting today to adopt 31 August as Mr Lovegrove's leave anniversary date for the purposes of calculating his Holidays Act 2003 (HA03) entitlements.

[3] The parties agreed that Mr Lovegrove was not paid any holiday pay upon termination. Mr Gibbons admitted to the Authority that PCE had not kept a holiday and leave record for Mr Lovegrove as required by s.81 of the HA03 (HA03).

[4] Pursuant to s.83 HA03 I am satisfied that PCE failed to comply with s.81 and s.82 HA03. Section 82 HA03 requires an employer to produce holiday and leave records upon request. Mr Lovegrove has requested his holiday and leave records and the Authority directed PCE to provide these but PCE has not made them available because they do not exist.

[5] I find that these failures prevented Mr Lovegrove from bringing an accurate claim. In accordance with s.83(4) HA03 I accept as proved, in the absence of satisfactory evidence to the contrary, Mr Lovegrove's evidence about the days and date of all paid annual holiday he took whilst employed by PCE.

[6] I find Mr Lovegrove is owed unpaid annual holiday pay consisting of:

- a. 54.5 days accrued annual holiday, to be calculated in accordance with s.24(2) HA03; and
- b. Unpaid annual holiday entitlement from 01 September 2014 to 16 January 2015, to be calculated in accordance with s.25(2) HA03.

[7] I find that the total of the two amounts in paragraph [6] a and b is what Mr Lovegrove is owed under s.27(2) HA03 because that is the amount he should have been paid upon termination (15 January 2015) but has still not yet been paid almost 11 months later.

[8] I am satisfied that Mr Lovegrove did not take any paid annual holiday in advance and that he was not paid any annual holiday pay upon termination so no deductions are to be made under s.25(2) HA03 from the amounts calculated in paragraph [6] above.

[9] The parties must ensure that their calculation of Mr Lovegrove's total gross earnings under s.25(2) HA03 (as per paragraph [6] above) includes the amount calculated under s.24(2).

[10] The parties did not provide the Authority with the information required to calculate these amounts. The Authority therefore directs the parties within 7 days to either agree (if possible) on the amounts in paragraph [6] or if agreement is not reached then apply in writing to the Authority to set these amounts.

[11] An application by either party to the Authority to set the amount of holiday pay arrears PCE has been ordered under this determination to pay Mr Lovegrove must include Mr Lovegrove's:

- a. Ordinary weekly pay as at 16 January 2015;
- b. Average weekly earnings during the 12 months immediately before the end of the last pay period before 16 January 2015;
- c. Total gross earnings from 01 September 2014 to 16 January 2015.

[12] Any application to the Authority to determine the amount Mr Lovegrove is owed in accordance with this determination must be made by no later than 11 December 2015. The parties must also file by that same date any evidence they wish the Authority to consider when it is determining the total amount of holiday pay arrears PCE has been ordered to pay Mr Lovegrove under paragraph [7] of this determination.

[13] Mr Lovegrove represented himself so there is no issue as to costs. However because Mr Lovegrove is the successful party PCE is ordered to reimburse Mr Lovegrove \$71.56 for his filing fee.

[14] PCE is ordered to pay Mr Lovegrove the amounts he has been awarded under this determination within 28 days of the date of this determination.

**Rachel Larmer**  
**Member of the Employment Relations Authority**