

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 1/10  
5285220

BETWEEN                      MANAAKI PEPE  
   MCKINNON and GEORGE  
   TUMOHE MCKINNON  
   Applicants

AND

   CLENDON INN 2007  
   LIMITED  
   Respondent

Member of Authority:        R A Monaghan

Representatives:            M and G McKinnon in person  
   S Cosgrave, advocate for respondent

Investigation Meeting:      On the papers

Determination:              5 January 2010

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment relationship problem**

[1]     Manaaki and George McKinnon say their former employer, Clendon Inn 2007 Limited, owes them unpaid wages and holiday pay. Liability has not been disputed.

[2]     In this determination all amounts are stated in gross figures.

**The claims for payment**

(a) payment in lieu of notice

[3]     Mr and Mrs McKinnon were both made redundant on 23 July 2009. According to employment agreements dated October 2008, in the event of redundancy both were entitled to four weeks' notice of their redundancy, or payment in lieu of

notice. The employment of both was terminated with immediate effect, so that both were entitled to four weeks' payment in lieu of notice.

[4] Accordingly the payments in lieu of notice are quantified as follows:

a. Manaaki McKinnon: salary of \$54,000 pa, \$1,038.46 pw

$$4 \times \$1,038.46 = \$4,153.84$$

b. George McKinnon: salary of \$54,000 pa, \$1,038.46 pw

$$4 \times \$1,038.46 = \$4,153.84$$

[5] Payment is ordered accordingly.

(b) wages owed as at date of termination

[6] The last date on which Mrs McKinnon received a payment of the salary due to her was 12 July 2009. She is owed a further week's pay in the sum of \$1,038.46.

[7] Payment is ordered accordingly.

[8] Mr McKinnon was paid for his last week of work, but says he was not paid for a 10 week period from 25 May – 29 July 2008. This was because the business was new and there was a delay in its opening. However Mr McKinnon said he worked Monday – Friday during that period, commencing at 8 am and working long hours on preparation, ordering and deliveries and security work. At the time the parties' written employment agreement specified an hourly rate of \$18.

[9] Mr McKinnon seeks a payment quantified with reference to the salary set out above and in a subsequent employment agreement. I am unaware of the number of hours he worked while payment was to be on an hourly rate, but since Mr Cosgrave did not take issue with the claim the amount owed is quantified as follows:

$$10 \times \$1,038.46 = \$10,384.60$$

[10] Payment is ordered accordingly.

(c) holiday pay owed as at date of termination

[11] Mr and Mrs McKinnon both seek four weeks' holiday pay. The totals sought are \$4,153.84 each.

[12] Payroll records which Mr Cosgrave filed indicate Mr McKinnon took four days' annual leave in February 2009, while Mrs McKinnon was also on annual leave on one of those days. The records show final holiday pay owed was:

- a. Manaaki McKinnon: \$3,946.11
- b. George McKinnon: \$3,323.04

[13] Payment is ordered accordingly.

(d) unpaid sick pay

[14] Mrs McKinnon took 5 days' sick leave commencing 20 July 2009. She has sought payment for the full 5 days. However she was given notice of the termination of her employment commencing 23 July, and payment in lieu of notice from that date has already been ordered. Payment cannot be made twice in respect of the same days.

[15] Mrs McKinnon is therefore entitled to payment of 2 days' sick leave. The total is \$415.40 and payment is ordered accordingly.

### **Summary of orders**

[16] Clendon Inn 2007 Limited is ordered to pay to Mrs McKinnon:

- a. \$4,153.84 as payment in lieu of notice;
- b. \$1,038.46 as one week's unpaid wages;
- c. \$3,946.11 as holiday pay; and
- d. \$415.40 as unpaid sick pay.

[17] Clendon Inn 2007 Limited is ordered to pay to Mr McKinnon:

- a. \$4,153.84 as payment in lieu of notice;
- b. \$10,384.60 as 10 weeks' unpaid wages; and
- c. \$3,323.04 as holiday pay.

[18] Interest is payable on all of the above amounts, calculated as 4.8% from 23 July 2009 to the date of payment.

**Costs**

[19] Clendon Inn 2007 Limited is further ordered to reimburse the McKinnons for the filing fee of a single payment of \$70.

R A Monaghan

Member of the Employment Relations Authority