

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 330/09
5166683

BETWEEN SAMANTHA MORRIS
 Applicant

AND JANE MARTENS, t/a
 SZIZZERS HAIR STUDIO
 Respondent

Member of Authority: Yvonne Oldfield

Representatives: Applicant in person
 Will Graham for Respondent

Investigation Meeting: 9 September 2009

Determination: 11 September 2009

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This matter concerns a claim for arrears of wages, holiday pay and sick pay. Ms Morris was employed as an apprentice at Szizzers Hair Studio on 22 January 2008. She worked 40 hours a week for most of the year, although in some weeks towards the end of that time she sometimes worked a shortened week. On Wednesday 21 January 2009 she gave notice of her resignation, expecting to work out her week's notice and finish on Tuesday 27 January. This did not happen. She worked her usual hours of work on the Wednesday and on Thursday 22 January. Then, on Friday 23 January, she was instructed by Ms Martens that she was to finish that day.

[2] Ms Morris had already been paid up to and including Tuesday 20 January. On Friday 23 January Ms Martens prepared separate payslips recording the holiday pay and wages which were to comprise Ms Morris's final pay. (These were supplied to the Authority.) She instructed Mr Graham, the salon manager, to write out a cheque for

each of these payments. Ms Martens then signed them. The cheques were handed to Ms Morris and she left.

[3] Ms Morris went straight to the bank to cash her cheques. The bank declined to honour them, telling her that there were insufficient funds, but did not return the cheques to Ms Morris. Ms Morris understood from the bank teller who had served her that she should contact Ms Martens to make alternative arrangements for payment. Ms Morris did so, providing Ms Martens with her address in the expectation that Ms Martens would post out replacement cheques. When that did not happen, Ms Morris lodged this employment relationship problem in the Employment Relations Authority. In her statement of problem she sought “*wages owing to me*” and “*my final week’s wages.*” At the investigation meeting she quantified her claim as follows:

Wages for final week worked (as set out in payslip supplied on 23 January 2009)	\$240.00 gross
Holiday pay (as set out in payslip supplied on 23 January 2009)	\$1,660.80 gross
Payment for balance of notice period (12 hours @ \$10.00/hr)	\$120.00 gross
Payment for one day’s unpaid sick leave in August 2009	\$80.00 gross
Total	\$2,100.80 gross

[4] Mr Graham, who was delegated by Ms Martens to represent her at the Authority investigation meeting, does not dispute the summary of events set out in paragraphs [1] and [2]. He also told me that he was present in the salon on the afternoon of 23 January, after Ms Morris had left, when Ms Martens took a call from the bank. He said he heard Ms Martens side of the call and understood that the bank was informing her of a concern that the date on the cheques had been altered. He said Ms Martens told him that she understood that she should do nothing more until the bank had completed an investigation into what had happened. It appears that Ms Martens may have thought that the cheques might yet be honoured.

[5] As it turned out, they were not. Mr Graham told me he understood that after hearing nothing from her bank for some months, Ms Martens rang it again and was told that the cheques had been destroyed.

[6] There is no dispute that no further attempts were made to pay Ms Morris, and that her final pay remains outstanding. As for the sick pay claim, Mr Graham told me that he was not able to comment on it other than to say he had no reason to dispute it.

Determination

[7] Ms Morris is entitled to be paid the amounts set out in the payslips prepared by Ms Martens. She is also entitled to be paid for the 12 further hours she would have worked if she had been permitted to complete her notice (as she was entitled to do.)

[8] Mr Graham was not able to tell me what sick leave was taken or whether it was paid. After checking the statement of problem I note that the respondent was not put on notice of the claim for sick pay so cannot be held accountable for sending along a representative who was unable to respond on the issue. I have concluded that I cannot make an order in relation to the sick pay claim.

Summary

[9] **The respondent, Jane Martens, is ordered to pay to the applicant, Samantha Morris a total of \$360.00 gross arrears of wages and \$1,660.80 gross holiday pay.**

Yvonne Oldfield

Member of the Employment Relations Authority