



New Zealand Employment Relations Authority Decisions

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Ng v Woodbay Limited t/a Pitz Cafe (Auckland) [2007] NZERA 77 (15 March 2007)

Determination Number: AA 74/07 File Number: 5039190

Under the [Employment Relations Act 2000](#)

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND OFFICE

BETWEEN Xue Ying Ng

AND Woodbay Limited t/a Pitz Cafe

REPRESENTATIVES Xue Ying Ng in person (for Applicant)

Roger McCracken (for Respondent)

MEMBER OF AUTHORITY Janet Scott

DATE OF DETERMINATION 15 March 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

The applicant claims arrears of holiday pay. The respondent denies the claim and submits that the applicant has been paid all holiday pay owed to her.

Background

The applicant worked for the respondent as a café assistant. She commenced work on 4 April 2005 and resigned from her employment with effect from 17 April 2006. She worked Monday to Friday and was paid \$12.50 per hour for a 40 hour week up until the Christmas closure 2005. From 9 January 2006 until her resignation the applicant was paid \$13.00 per hour. Over the Christmas period 2005/2006 the café was closed and the applicant was paid for the period 26 December 2005 - 6 January 2006. Both parties described the payment made for this period (with the exception of payments made for public holidays) as holiday pay. The respondent described the payment as holiday pay in advance.

The parties are now in dispute as to whether or not Ms Ng has received all holiday pay owing to her. It would be an understatement to say the relationship between the parties is a tense one and I note the respondent refused to attend mediation in the matter.

Following telephone conferences between the parties and the Authority, I advised them that I would request a Labour Inspector of the Department of Labour to investigate the applicant's claim and that I would then prepare a report for the parties and allow them the opportunity to consider and respond to that report prior to my issuing a determination in the matter. The parties provided a significant

amount of information - including wage and time records and banking statements - which was forwarded to the Labour Inspector to allow him to assess the applicant's entitlement to holiday pay and holiday payments made.

The Labour Inspector completed his report and submitted it to me on 17 November 2006. The Labour Inspector concluded that the amount of \$96.63 gross is owing to the applicant as arrears of holiday pay.

The Authority considered the Labour Inspector's assessment and prepared a memorandum to the parties explaining the assessment. The parties were advised the Authority agreed with the Labour Inspector's assessment as a correct statement of the arrears of holiday pay owing to Ms Ng based on the information provided and the correct application of the [Holidays Act 2003](#). That memorandum was sent to the parties on 18 January 2007.

The parties were reminded that the applicant was seeking arrears of holiday pay owing and costs (being the \$70 filing fee incurred in bringing the matter to the Authority). The parties were advised that if the Authority were to confirm the sum owing and costs this would lead to a determination by the Authority that the respondent pay to Ms Ng the sum of \$96.63 gross as arrears of holiday pay and \$70 costs. The parties were invited to comment on this proposal. Submissions were to be made in writing to the Authority by 9 February 2007. The Labour Inspector's report and other relevant information was provided to the parties to assist them in making submissions.

Neither party has provided submissions. I have, however, been advised that Mr McCracken has contacted the Labour Inspector to dispute his assessment of holiday pay owing. He was reminded of the Authority's directions in the matter - that the parties had been invited to make submissions to the Authority. No submissions have been received from him.

Determination

In accordance with the advice given to the parties on 18 January, I accept the Labour Inspector's assessment as to the arrears of holiday pay owing to the applicant. The Labour Inspector's assessment is based on a *correct* application of the provisions of the [Holidays Act 2003](#) having regard to the facts of the case and relevant employment records.

I therefore direct the respondent to pay to the applicant the sum of \$96.63 gross as arrears of holiday pay and \$70.00 net in costs (to reimburse the applicant for the cost of filing in the Authority).

Janet Scott
Member of Employment Relations Authority