

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2014] NZERA Auckland 369  
5462248

BETWEEN                      PAUL NOYES  
Applicant

A N D                              TWCE (2014) LIMITED  
Respondent

Member of Authority:      T G Tetitaha

Representatives:              Applicant in person  
Respondent in person

Investigation Meeting:      On the papers

Submissions Received:      23 May 2014 from the Applicant  
10 August 2014 from the Respondent

Date of Determination:      4 September 2014

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**DETERMINATION OF THE AUTHORITY**

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**A. TWCE (2014) Limited is ordered to pay Paul Noyes \$903.50 comprising:**

- i) wage arrears pursuant to s.131 of the Employment Relations Act 2000 totalling \$831.94;**
- ii) \$71.56 being the applicant's filing fee.**

**Employment relationship problem**

[1] Paul Noyes seeks recovery of wage arrears for sick leave taken on 14, 17, 21 and 24 March 2014 totalling \$831.94. He also seeks recovery of his filing fee in the Employment Relations Authority of \$71.56.

[2] The respondent employer, TWCE (2014) Limited opposes payment. It raises concerns about the validity of the medical certificates Mr Noyes has provided.

## **Preliminary matter – Respondent Employer**

[3] Originally the applicant had named Tom Watson as the respondent employer. The applicant's pay slips all name "Watco Plumbing Ltd" as the payer of wages. His submission to the Employment Relations Authority (Authority) refers to having been working at "Watco Plumbing" for seven months.<sup>1</sup> There was no written employment agreement.

[4] On 5 June 2014 Mr Watson made a submission on behalf of "TW & CE Watson Family Trust." He refers to have recently sold the business of Watco Plumbing Limited whom employed Mr Noyes.

[5] From the companies office search undertaken by the Authority support officer on 9 August 2014, Watco Plumbing Limited was the previous name of TWCE (2014) Limited. One of the named directors is Thomas Wentworth Watson. Although Mr Watson may have sold the business, the company whom employed Mr Noyes remains in existence, albeit with another name of TWCE (2014) Limited.

[6] From the evidence the applicant's employer is TWCE (2014) Limited, a company formerly known as Watco Plumbing Limited. Therefore the respondent's name shall be amended to TWCE (2014) Limited.

## **Facts leading to dispute**

[7] Mr Noyes was employed as a plumber by the respondent company during the relevant times in 2014.

[8] During March 2014, Mr Noyes became ill. He took time off to recover from Friday 14 March to Monday 17 March 2014 and again on Friday 21 March to Monday 24 March 2014. At the time Mr Noyes believed he did not require a medical certificate as he had only taken two days' sick leave.

[9] When he returned to work, the respondent refused to pay for his days off work on 14, 17, 21 and 24 March 2014 as sick leave. The days taken were recorded as annual leave instead. Thomas Watson (Tom Watson) dealt with this issue on behalf of the respondent.

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<sup>1</sup> Submission received 23 May 2013

[10] On or about 2 April 2014 Mr Noyes submitted the issue to a Labour Inspector. The Labour Inspector referred the parties to section 68 of the Holidays Act 2003:

**68 Proof of sickness or injury**

(1) An employer may require an employee to produce proof of sickness or injury for sick leave taken under section [65](#) if the sickness or injury that gave rise to the leave is for a period of 3 or more consecutive calendar days, whether or not the days would otherwise be working days for the employee.

[(1A) Despite subsection [\(1\)](#), the employer may require proof of sickness or injury within 3 consecutive calendar days if the employer—

(a) informs the employee as early as possible that the proof is required; and

(b) agrees to meet the employee's reasonable expenses in obtaining the proof.]

(2) Subsection [\(1\)](#) does not prevent an employer and employee from agreeing that the employee will produce proof of sickness or injury for sick leave provided to the employee in addition to the entitlement set out in section [65](#).

(3) For the purposes of this section, proof of sickness or injury may include a certificate from a medical practitioner ...that—

(a) the employee is not fit to attend work because of sickness or injury; or

(b) the employee cannot attend work—

(i) because the employee's spouse [or partner] is sick or injured:

(ii) because a person who depends on the employee for care is sick or injured.

[(4) To avoid doubt,—

(a) this section does not prevent an employer who is otherwise legally authorised to so require, from requiring an employee to establish that there are no relevant health and safety reasons or hygiene reasons that would prevent the employee from working:

(b) subsection [\(1\)](#) or subsection [\(1A\)](#) does not give the employer the right to require the employee to obtain the proof from a person specified by the employer.]

[(5) In this section, medical practitioner means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section [114\(1\)\(a\)](#) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine.]

[11] On 14 April 2014 the Labour Inspector emailed Mr Noyes advising the respondent's position was that once a medical certificate was produced the leave will be credited.

[12] On 16 April 2014, Mr Noyes attended Te Whareora o Tikipunga Medical Centre. He saw Dr Lynne Harvey. Dr Harvey issued one medical certificates stating:

*The above patient reported to me on 16 April 2014 ... stating that he ... has been unfit for work from 14/03/14 ... to 18/03/14 date of return to work.*

[13] Dr Harvey then issued a second medical certificate stating:

*The above patient reported to me on 16 April 2014 ... stating that he ... has been unfit for work from 21/03/14 ... to 24/03/14. Return to work on 25/03/14.*

*On both occasions in March he was not aware that being away on Friday & Monday constituted 4 days off work requiring a medical certificate ...*

[14] Mr Watson was unhappy with the information contained therein. He believed it was too vague. Mr Noyes believed he had complied with the requirement to provide a medical certificate and sought payment.

[15] On 23 May 2014 Mr Noyes submitted a personal grievance to the Authority. A statement in reply was filed on 6 June 2014. The matter was referred to mediation but this was unsuccessful in resolving it.

[16] At a teleconference on 15 July 2014, both parties agreed the sole issue preventing resolution of the matter was the validity of the medical certificates produced in support of Mr Noyes' sick leave. Mr Watson confirmed that if the medical certificates could be justified by medical records, the respondent had no issue with the wage arrears being paid. If there were no or insufficient medical records to support the certificates, he believed Mr Noyes' claims should fail.

[17] There were concerns about the amount of cost both parties may incur in litigating this matter as opposed to the benefit sought. The applicant wage arrears and filing fee total \$903.50. The matter would require a half day hearing in Whangarei. Mr Watson lived in Auckland. Mr Noyes is now employed elsewhere. The costs to the parties of attending a hearing would likely outweigh the remedies sought.

[18] In the circumstances, the parties consented to me attending Te Whareora o Tikipunga Medical Centre to meet with Dr Harvey and view Mr Noyes' medical records. I would provide the parties with a summary of my visit by way of Minute. They would then be given an opportunity to file further submissions and a decision made on the papers. These directions were incorporated into a Minute<sup>2</sup>.

[19] On 29 July 2014 I attended Te Whareora o Tikipunga Medical Centre. Dr Harvey was unavailable as she was not employed by the practice but only used to cover temporary absences. In her absence I met with the practice manager, Dr Aniva Lawrence<sup>3</sup>, and a Minute was issued on or about 6 August 2014 setting out her evidence below:

*Dr Lawrence gave me the following evidence under oath:*

- (a) *She holds the medical degrees MBCh B and FRNZ CEP. She is the practice owner and manager of Te Whare Ora o Tikipunga Medical Centre.*
- (b) *Dr Lynn Harvey was a locum doctor used to cover absences at the medical centre.*
- (c) *From Dr Harvey's notes taken in support of the medical certificates, there was a record of Mr Paul Noyes being seen at the practice on 16 April 2014.*
- (d) *Dr Lawrence indicated it was not unusual for doctors to issue certificates for periods of time after illness has occurred.*
- (e) *Dr Lawrence had sighted the medical certificates for the sick leave days in March. She confirmed the medical notes recorded the patient's description of his symptoms (coughs and chills) regarding sick leave taken on 14 and 16 March 2014. She further advised it was common in her experience to have patients presenting with flu-like symptoms during March 2014.*

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<sup>2</sup> Minute of the Authority dated 15 July 2014

<sup>3</sup> Dr Lawrence's name has been corrected in her evidence replicated from the Minute dated 6 August 2014.

- (f) *Dr Lawrence confirmed the medical notes for the following week of 21-24 March 2014, indicated Mr Noyes had lower back pain. From his records he had received previous medical treatment for the same complaint. When examined on 16 April 2014 he showed a good range of movement. In Dr Lawrence's experience, a plumber's job was labour intensive and involved crawling in tight spaces. Mr Noyes symptoms were not uncommon in his line of work. She would not have encouraged someone presenting with Mr Noyes' symptoms to continue working if they had back problems. Her preference would be to have them rest rather than continue working through.*
- (g) *In Dr Lawrence's opinion from her perusal of the medical notes for Mr Noyes, there was nothing of concern about issuing the medical certificates.*

[20] The respondent has filed submissions. The applicant has not. I now proceed to determine this matter on the papers.

### **Determination**

[21] The applicant submits he has medical certificates and ought to be paid sick leave for the relevant period. The respondent questions the acceptance of the medical certificates because the visit did not occur until 16 April 2014. It also submits they were based upon what Mr Noyes stated to the doctor retrospectively and accepting the medical certificates would be "a mockery" and "a farce".

[22] The delay in Mr Noyes attending a doctor to obtain a medical certificate appears to have arisen due to the misunderstanding about the requirement to produce a certificate at all. This was not clarified until the Labour Inspector became involved in April 2014.

[23] The respondent was entitled to require the medical certificates to be produced by the employee. However if it wished to have the medical certificate produced within 3 consecutive days of the illness it needed to inform the employee "*as early as possible that the proof is required*" and the respondent employer "*meet the employee's reasonable expenses in obtaining the proof*" (see s68(1A)).

[24] The evidence indicates the request for a medical certificate was made sometime after the dates of illness. There is no evidence the respondent employer was paid or offered to pay for the employee to obtain a medical certificate at the time. Any delay in obtaining the certificate is not fatal to this application because the criteria in s68(1A) has not been met. The respondent cannot complain if a medical certificate is procured sometime later at the employees own expense. The delay in obtaining the certificate is not fatal to this application.

[25] Both medical practitioners met the criteria in s68(5) to issue medical certificates.

[26] The wording of Dr Harvey's medical certificate was unfortunately vague. However I accept Dr Aniva Lawrence's evidence that based upon Dr Harvey's notes taken at the time, there were sufficient symptoms disclosed by Mr Noyes to justify the issue of medical certificates he was unfit for work on the days in question. While the respondent may be suspicion about the symptoms disclosed, Dr Lawrence was firm the symptoms were consistent with illnesses prevalent in this community at the time and with a pre-existing injury of Mr Noyes for which he was receiving treatment.

[27] In the circumstances I determine Mr Noyes meets the statutory criteria in s68 Holidays Act 2003 for payment of sick leave on 14,17,21 and 23 March 2014.

[28] This is an appropriate case for the reimbursement of the Authority's filing fee. There are no further orders as to costs as both parties were self-represented.

[29] TWCE (2014) Limited is ordered to pay Paul Noyes \$903.50 comprising:

- i) wage arrears pursuant to s.131 of the Employment Relations Act 2000 totalling \$831.94;
- ii) \$71.56 being the applicant's filing fee.

**T G Tetitaha**  
**Member of the Employment Relations Authority**