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Pharmacy Retailing (NZ) Limited v Ngairie Takarua (Auckland) [2007] NZERA 129 (26 April 2007)

Determination Number: AA 123/07 File Number: 5050158 *Under the [Employment Relations Act 2000](#)*

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND OFFICE

BETWEEN Pharmacy Retailing (NZ) Limited

AND Ngairie Takarua

REPRESENTATIVES Paea Tu'i-Paea, advocate for Pharmacy Retailing (NZ)

Limited No appearance for Ngairie Takarua

MEMBER OF AUTHORITY R A Monaghan

INVESTIGATION MEETING 26 April 2007

DATE OF DETERMINATION 26 April 2007

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Pharmacy Retailing (NZ) Limited ("Pharmacy Retailing") employed Ngairie Takarua as payroll officer in July 2005. After Ms Takarua's employment ended in or about April 2006 an administrative error meant her salary continued to be paid for a further two months. Pharmacy Retailing seeks recovery of the overpayment.

[2] Ms Takarua has not disputed her liability to repay, or that the amount owed is \$5,345.88.

Preliminary matter

[3] Ms Takarua did not attend and was not represented at the investigation meeting. She is aware of the detail of the employment relationship problem, and of the date of the meeting.

[4] The Authority's Notice of Investigation Meeting includes a note saying:

"If the Respondent does not attend the investigation meeting, the Authority may, without hearing evidence from the Respondent, issue a determination in favour of the applicant."

[5] Ms Takarua contacted the Authority's registry on or about 16 April 2007 regarding the matter, and informed the Support Officer that she was willing to make regular payments and would commence making them 'shortly'. She informed the Authority she would not be attending the investigation meeting, confirming this by email message dated 25 April 2007 and relying on 'workload commitments'.

[6] That information in itself is of doubtful weight when it comes to establishing good cause for any failure to attend an investigation meeting. However in the circumstances I am about to outline I find it unacceptable and have a concern that Ms Takarua has not acted in good faith.

[7] Accordingly I proceeded to hear and determine this matter in Ms Takarua's absence in reliance on clause 12, Schedule 2 of the [Employment Relations Act 2000](#).

Attempts to resolve the matter

[8] By letter dated 24 August 2006 Pharmacy Retailing advised Ms Takarua it would seek mediation, since Ms Takarua had not

responded to its approaches regarding proposals for repayment. In an emailed message dated 30 August 2006 - sent to an address which Pharmacy Retailing says does not exist - Ms Takarua advised, among other things, that she did not consider mediation necessary, as well as confirming her agreement to repay the monies owed and advising that she had arranged for \$50 per week to be paid 'to the bank account Pharmacy Retailing had supplied'. The message said the first payment would be banked on 6 September 2006.

[9] No payment was received.

[10] In the absence of an agreement to mediate Pharmacy Retailing filed its employment relationship problem in the Authority on 11 September 2006. In her statement in reply dated 2 October 2006 Ms Takarua advised she had made arrangements to pay the money back, and said "I have begun payments to recover the overpayment."

[11] Still no payment was received. In a letter dated 8 November 2006 the Authority's support staff forwarded to Ms Takarua confirmation from Pharmacy Retailing of the necessary bank account details.

[12] The Authority referred the matter to mediation and, upon being advised that Ms Takarua was not responding to attempts to arrange a meeting, issued a formal direction to mediation. This time Ms Takarua declined to attend mediation, citing various reasons including 'work commitments' and asserting she had lost Pharmacy Retailing's bank account details.

[13] Accordingly the matter was set down for an investigation meeting.

[14] Meanwhile Pharmacy Retailing continued to attempt to resolve the matter with Ms Takarua. By letter dated 20 April 2007 it forwarded to her a proposed record of settlement for her signature. The document specified the sum owed as \$5,345.88, and provided for payments of \$50 per week to the bank account number set out. It required payments to commence on 3 May 2007 and reserved the right to seek interest.

[15] Ms Takarua did not sign or return the document. She merely confirmed that she would not be attending the investigation meeting. She asserted further to the Support Officer that she had set up an amount of \$25 per week to be deposited into the bank account number provided. Pharmacy Retailing says this is not satisfactory as it seeks payments of \$50 per week.

[16] For my [part I](#) find Ms Takarua's assertion unreliable. On several occasions she has asserted a willingness to make payments that were not made, and has asserted that arrangements to make the payments had commenced when apparently that was not the case. I find questionable her assertions regarding her knowledge of Pharmacy Retailing's bank account details as initially she acknowledged having them, and they have since been confirmed to her twice. Her failures to respond constructively to attempts to arrange mediation are also unacceptable, as are her failures to respond constructively to Pharmacy Retailing's attempts to resolve matters with her directly. Not only that, for reasons that are not satisfactory she decided not to attend the Authority's investigation meeting. She has embarked on a series of delaying tactics, which cannot continue.

Orders of the Authority

[17] In those circumstances I make the following orders:

(a) Ngairie Takarua is ordered to pay to Pharmacy Retailing (NZ) Limited the amount of \$5,345.88, payable in weekly instalments of \$50 per week to the bank account number provided, reference number N Takarua, commencing Thursday 3 May 2007 and ceasing when the full amount has been repaid.

(b) In the event of any default in payment on the part of Ngairie Takarua Pharmacy Retailing may elect to treat the entire amount outstanding as at the date of the default as due and payable immediately.

(c) Interest shall be payable on the amount in default, or on the entire amount outstanding in the event of an election in terms of (b) above, at the rate of 8% per annum from the date of the default to the date of payment.

Costs

[18] Ms Takarua is further ordered to reimburse Pharmacy Retailing in respect of the Authority's filing fee of \$70.

R A Monaghan
Member of Employment Relations Authority

