

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2019] NZERA 177
3049093

BETWEEN

NICOLA PORTER
Applicant

AND

CAMPBELL LIVESTOCK
LIMITED
Respondent

Member of Authority: Andrew Dallas

Representatives: Applicant in person
Jane Campbell for the Respondent

Investigation Meeting On the papers

Date: 25 March 2019

DETERMINATION OF THE AUTHORITY

Background

[1] Nicola Porter was employed by Campbell Livestock Limited (Campbell) from August 2013 until May 2018. Ms Porter was not provided with an employment agreement.

[2] Ms Porter claims she is owed unpaid holiday pay, unpaid public holiday pay and unpaid sick leave.

[3] Ms Porter sought to recover these outstanding amounts directly from Campbell Livestock herself and via the Marlborough Community Law Centre. However, her efforts over several months to obtain wage records and recover these amounts proved fruitless. Jane Campbell on behalf of Campbell claimed these records had been provided to the community law centre

The Authority's investigation

[4] Ms Porter subsequently lodged a statement of problem in the Authority seeking payment of the outstanding wages.

[5] Campbell did not lodge a statement in reply or seek leave to lodge one out of time. I am satisfied that Campbell was properly served by the Authority.

[6] Having taken into account the surrounding circumstances outlined above, I decided to investigate Ms Porter's employment relationship problem on the papers under s 174D of the Act.

[7] As Ms Porter had sought wage records and these were not forthcoming, she was asked by the Authority to quantify her claim for unpaid minimum entitlements. Ms Porter said she was owed holiday pay of \$6,667.50 gross, public holiday pay of \$405 gross and \$915 gross as unpaid sick leave.

[8] In response to the provision of this information, the Authority formed a view in reliance on s 132(2) of the Employment Relations Act an order for payment of outstanding holiday pay and sick leave should be made.

[9] On 31 January 2019, a Member's Minute was issued to the parties setting out the nature of Ms Porter's employment relationship problem. Campbell was asked to provide written comment on Ms Porter's claims. Jane Campbell on behalf of Campbell Livestock Limited claimed Ms Porter's wage and time records had been provided to the Community Law Centre. She provided emails from 5 October 2018 where she purported to do this. Ms Campbell also denied Ms Porter's claim and said she had been paid holiday pay and sick leave correctly.

[10] Ms Porter said the emails were not received by the Community Law Centre and she had not seen the records until they were provided to her by the Authority. Ms Porter said having reviewed the same, she said they were not accurate and she reconfirmed the holiday and sick leave calculations provided to the Authority.

Outcome

[11] I find that Campbell did not produce wage and time records to assist Ms Porter in the calculation of her claims for holiday pay and sick leave. When these were ultimately produced to the Authority, I further accept, on the balance of probabilities, they are not complete and/or accurate. In the absence of records disproving Ms Porter's claim, and in reliance on s 132(2) of the Act, I accept her claims.

[12] Consequently, Campbell must pay Ms Porter \$6,667.50 gross, public holiday pay of \$405 gross and \$915 gross as unpaid sick leave within 28 days of the date of this determination.

[13] It is also fair and reasonable to propose to make an order that Campbell reimburse Ms Porter for the Authority's filing fee of \$71.56.

[14] Ms Porter also sought a penalty under the Act for failure to keep and produce wage and time records. However, I have decided this is not an appropriate case to impose a penalty on Campbell due the small window of doubt created by its insistence that wage and time records, even those found to be incomplete and inaccurate, were provided to the Community Law Centre following a request to do so.

Costs

[15] As neither party was represented before the Authority, there is no issue as to costs.

Andrew Dallas
Member of the Employment Relations Authority