

who said Ms Gower was unwell and at the doctor and the mobile telephone number she rang was no longer active.

[5] I am satisfied that Ms Gower was served with a copy of the Notice of Investigation Meeting within seven clear days of the date of the investigation. Ms Gower has not sought to adjourn the investigation. In these circumstances it was appropriate to proceed with the investigation and determine the issues before the Authority.

The mistaken payment

[6] Gerald Hudson, the respondent's executive chairman, gave evidence in support of the application, summarised as follows:

- (i) Ms Gower tendered her resignation on 30 November 2007 with an effective date of 21 December 2007;
- (ii) The employment agreement required four weeks notice and as this was the busiest time of year for the business her final date was reset to 28 December 2007;
- (iii) Ms Gower did not attend work on 27 and 28 December 2007;
- (iv) Ms Gower was not paid for 25, 26, 27 and 28 December 2007;
- (v) Ms Gower did not return to work;
- (vi) On 16 January 2008 Ms Gower was mistakenly paid \$1038.54, her usual fortnightly wages;
- (vii) On 31 January 2008 the respondent's accountant wrote to Ms Gower requesting refund of the money;
- (viii) Attempts to contact Ms Gower to discuss the over payment were unsuccessful;
- (ix) On 6 March 2008 the respondent's accountant wrote to Ms Gower again seeking recovery of the overpaid amount;
- (x) Subsequent to receiving Ms Gower's statement in reply and the mediation attended by the parties the respondent wrote to Ms Gower on 17 June 2008 with a revised claim of \$732.53 (payment of \$231.01 for 25, 26 December 2007 statutory holidays and an offer of \$75 to

settle Ms Gower's vehicle expenses claim as set out in the statement in reply); and

- (xi) Ms Gower has not responded to this revised claim.

[7] I am satisfied that the amount of \$1038.54 was mistakenly paid to Ms Gower and has not been repaid by Ms Gower despite demand made to her. I am satisfied that this matter is an employment relationship problem².

[8] I am satisfied that Ms Gower should have been paid for statutory holidays which fell on 25 and 26 December 2007 and that the sum of \$231.01 is properly deducted from the mistakenly paid sum.

[9] I am not satisfied that the sum of \$75 offered to Ms Gower to settle her vehicle expenses claim should be deducted from the mistakenly paid sum. There is no evidence that it was a term of Ms Gower's employment that her vehicle expenses should be reimbursed.

[10] I do not accept that Ms Gower's claim for sick leave should be off set against the mistakenly paid sum. I accept Mr Hudson's evidence that Ms Gower had no sick leave entitlement.

[11] I do not accept that Ms Gower is entitled to retain the mistakenly paid sum because the respondent did not invoke section 6 Wages Protection Act 1983. Her employment had ended when the mistaken payment was made. There was no *next pay-day* in which recovery could be sought.

Orders

[12] **Trudi Gower is ordered to pay Provide Foods Limited \$807.53 within 14 days of the date of service of this determination. A copy of the determination is to be served on Ms Gower at the address for service of the Notice of Investigation Meeting was affected, 83C Pembroke Street, Hamilton.**

² Section 161 Employment Relations Act 2000

[13] Ms Gower is to reimburse Provide Foods Limited the \$70 filing fee incurred in lodging this application.

Marija Urlich

Member of the Employment Relations Authority