

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKAURAU ROHE**

[2019] NZERA 56  
3049772

BETWEEN

ALEXANDRA RANFORD  
Applicant

AND

HOXTON@DEVO LIMITED  
Respondent

Member of Authority: Eleanor Robinson

Representatives: Applicant in Person  
None for Respondent

Investigation Meeting: 7 February 2019

Date of Oral Determination: 7 February 2019

Date of written  
Determination: 7 February 2019

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The Applicant, Ms Alexandra Ranford, claims that she is owed wages for the period ended 16 September 2018 in the sum of \$1,192.95 by the Respondent, Hoxton@Devo Limited (Hoxton). Ms Ranford claims that she is also owed unpaid annual holiday pay by Hoxton.

[2] Ms Ranford has provided pay slips and bank statements in support of her claims.

**Background**

[3] Hoxton, which has since been sold, is a registered company operating a café and bar. David Adamson is the sole director and shareholder.

[4] Ms Ranford was employed as Wait Staff and employed pursuant to an individual employment agreement (the Employment Agreement) which had been signed by her on 2 February 2018, the date she commenced employment.

[5] The Employment Agreement set out at clause 2.3 that Ms Ranford's hours were to be worked on a rostered shift basis of between 40 – 45 hours per week. The hourly rate of pay was set out at clause 3 as \$17.00.

[6] Holiday leave entitlement was set out at clause 4 and entitled Ms Ranford to 4 weeks annual leave in accordance with the Holidays Act 2003.

[7] Ms Ranford claims that she is owed the sum of \$1,192.95 gross as unpaid wages and a sum in respect of unpaid annual holiday pay by Hoxton.

### **Issues**

[8] The issues for determination are whether or not Ms Ranford is owed unpaid wages and unpaid annual holiday pay by Hoxton

### **Failure of Respondent to attend or be represented**

[9] Hoxton did not attend, and was not represented, at the Investigation Meeting despite the Notice of Investigation having been served at the registered office of Hoxton.

[10] An Authority Officer attempted on several occasions to contact Hoxton director, Mr David Adamson, by telephone/ email at email addresses but was been unable to elicit any response.

[11] The Authority Officer also contacted Nightingale Associates, Chartered Accountants which is the registered office of the Respondent to confirm that it had received the various documents which had been couriered to Hoxton. Nightingale Associated confirmed that it had forwarded the documents to Mr Adamson and also to Hoxton's lawyer, Mr Michael Dineen, who is also a shareholder of Hoxton.

[12] I delayed the commencement of the investigation meeting for some 10 minutes; however Mr Adamson did not arrive. No other representative of Hoxton attended. The Investigation Meeting was delayed for a short time while the Authority Officer attempted to contact Hoxton in connection with its non-attendance prior to the Authority Investigation

[13] For the reasons set out above I am satisfied that Hoxton had notice of the application and the date of the Investigation Meeting and that it chose not to attend or to be represented.

[14] Hoxton has not shown good cause for its failure to attend or to be represented. I have therefore proceeded pursuant to clause 12 Schedule 2 of the Employment Relations Act 2000 (the Act) to act as fully as if Hoxton had attended or been represented.

### **Determination**

#### *Statutory entitlement to wages*

[15] The Wages Protection Act 1983 governs the payment of wages between an employer and an employee. In accordance with s 4: *an employer shall, when any wages become payable to a worker, pay the entire amount of those wages to that worker without deduction.*

[16] Ms Ranford's claims were supported by documentation substantiating the dates for which she was claiming non-payment and she gave evidence by way of affirmation which supported the documentary material filed with the Authority.

[17] I determine that Ms Ranford is entitled to payment of wages for the hours which she worked in the sum of \$1,192.95 net.

#### *Statutory Holiday Entitlement*

[18] Statutory holiday pay is calculated in accordance with the provisions of the Holidays Act 2003 (the HA).

[19] Ms Ranford did not work consistent hours each week, however she had agreed to work approximately 40-45 hours per week on a rostered basis in accordance with clause 2.3 of the Employment Agreement. Although Ms Ranford's hours varied weekly, she said she had not verbally agreed to being paid holiday pay with her pay, and there is no agreement in the Employment Agreement to that effect pursuant to s 28(1)(b) of the HA.

[20] Ms Ranford had not completed 12 months continuous service at the termination of her employment on 2 September 2018 when her employment with Hoxton terminated. Employees who have not completed 12 months continuous employment are covered by s 23 of the HA which mandates that the employer must pay the employees holiday pay at the rate of 8% of the employee's gross earnings.

[21] Ms Ranford said that she had not received annual holiday pay during her period of employment at Hoxton.

[22] Ms Ranford was able to provide evidence in respect of the hours she worked during her employment. The average number of hours worked each week was 30.25.

[23] I determine that Ms Ranford is entitled to payment for annual holiday pay in the sum of \$1,234.25 gross (calculated as 30.25 hrs x \$17.00 per hour x 30 weeks x 8%).

### **Remedies**

[24] Hoxton is ordered to pay Ms Ranford the sum of \$1,192.95 net in respect of unpaid wages for the period ended 16 September 2018.

[25] Hoxton is ordered to pay Ms Ranford the sum of \$1,234.25 gross as unpaid holiday pay pursuant to s 25 (2) of the HA.

[26] **Payment is to be made within 7 calendar days of the date of this Determination.**

### *Interest*

[27] The Authority has the power to award interest if it thinks fit pursuant to clause 11 of the Second Schedule of the Act at the rate prescribed by the Judicature Act 1908, which is currently 5% per annum<sup>1</sup>.

[28] I consider that it is appropriate that Hoxton pays interest on the outstanding sums owed to Ms Ranford.

[29] **Hoxton is ordered to pay interest on the sums awarded to Ms Ranford as unpaid wages and unpaid annual holiday pay until such time as the payment has been made in full.**

### *Filing Fee*

[30] Ms Ranford is to be reimbursed the filing fee of \$71.56 by Hoxton.

### **Costs**

[31] There is no order for costs.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**

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<sup>1</sup> Judicature (Prescribed Rate of Interest) Order 2011 (SR2011/177)