

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2016] NZERA Christchurch 182  
5536160

BETWEEN            WAYNE REYNOLDS  
                                 Applicant  
  
A N D                INWOOD INVESTMENTS  
                                 LIMITED  
                                 Respondent

Member of Authority:     James Crichton  
  
Representatives:         No appearance for Applicant  
                                 Gerard Praat, Counsel for Respondent  
  
Investigation Meeting:    20 September 2016 at Nelson  
  
Date of Determination:    6 October 2016

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     The applicant (Mr Reynolds) complains that holiday pay and wages were deducted from his final pay without his authority.

[2]     The employer (Inwood Investments) agrees it made the deduction but say it did that to recover the value of property belonging to them which Mr Reynolds kept at the end of the employment.

**The issues**

- [3]     The two issues for determination are:
- (a)     Does Inwood Investments have the legal right to deduct moneys from Mr Reynolds' final pay; and
  - (b)     Did Mr Reynolds retain property of the employer?

[4] While neither party attended the investigation meeting, (although counsel for the respondent attended), I had the benefit of full written particulars in the pleadings and some briefs of evidence. I decided I could conclude the matter appropriately by talking by telephone to both the principal protagonists.

### **Can Inwood Investments deduct?**

[5] I can deal with this matter shortly. In my Minute dated 20 September last I confirmed I would be disposing of this matter by making an order that Inwood Investments must pay to Mr Reynolds the sum of \$558.70 which was the amount it deducted from Mr Reynolds' final pay. I deal with the property issue separately, in the next section of this determination.

[6] The reason I am ordering Inwood Investments to pay Mr Reynolds the sum of \$558.70 which it withheld from his final pay is that there is no signed employment agreement between the parties (or at least none has been put before me) and on that basis there is no written statement by Mr Reynolds permitting Inwood Investments to make the deduction. Had the employment agreement been signed by both parties, or had there been an alternative document signed by Mr Reynolds authorising the deduction, my answer would have been different.

[7] Section 5 of the Wages Protection Act 1983 prescribes that an employer may only make deductions from wages owing to an employee with the written consent of the worker. In the absence of such written authorisation no such deduction may be made.

### **Did Mr Reynolds retain company property?**

[8] Inwood Investments justifies its action in deducting moneys from Mr Reynolds' final pay on the footing it sought to recover the money value of its property which it says Mr Reynolds retained.

[9] Mr Reynolds maintains that the two items referred to in the statement of problem and statement in reply, namely a set of chaps and a safety helmet, were both left at the workplace when he departed. Inwood Investments resists those claims.

[10] Mr Reynolds says he swapped his chaps with another employee before he left the workplace and that the set of chaps in the swap was originally his, that is,

Mr Reynolds brought them with him to the workplace when he commenced employment there. It follows that he left his chaps with another employee of Inwood Investments and took away with him that employee's set.

[11] When I spoke to Mr Reynolds by telephone he was adamant this was the position and that he, along with a number of other staff, came to the workplace initially with some of their own gear.

[12] But Inwood Investments does not accept that account at all. It says Mr Reynolds was a "*green horn*" when he started with it and had no gear of his own and certainly did not introduce a set of chaps to the workplace. Moreover, Inwood Investments maintains it takes health and safety matters very seriously and all its safety gear is purchased from two suppliers only and it does not allow its workers to introduce their own gear.

[13] The safety helmet issue can be simply summarised; in the Statement of Problem Mr Reynolds says he left the helmet at the workplace when he ceased employment while Inwood Investments says not only did he not do that, he deliberately called at his former worksite, uplifted the safety helmet and chaps and did not return subsequently to the workplace. When I spoke to Mr Reynolds by telephone he agreed he had retained the safety helmet.

[14] A third property issue arises. In the statement of problem, Mr Reynolds refers, for the first time, to having retained a camel pack and notes there has been no attempt by Inwood Investments to get the money value of that item back. Inwood Investments says the reason it did not seek to recover the money value of that item is because it did not know that Mr Reynolds had taken a camel pack when he left the workplace.

[15] Dealing first with the chaps, I incline to the view that Mr Reynolds' evidence on this point is to be preferred; the story of swapping chaps with a co-worker seems plausible. Moreover, Mr Reynolds said a number of workers introduced their own gear to the workplace, not just him.

[16] Having made that finding, I am unable to take matters any further. Mr Reynolds says he will return the chaps he has if Inwood Investments returns the chaps it has of his, and that seems a waste of everyone's time, frankly.

[17] The helmet and the camel pack are both still in Mr Reynolds' possession. He doubted that anyone else would want to use them after he had used them but if Inwood Investments wants them back he is prepared to return them.

### **Determination**

[18] Inwood Investments is to pay to Mr Reynolds the sum of \$630.26 being the amount of \$558.70 deducted from Mr Reynolds' wages and the Authority filing fee of \$71.56.

[19] Mr Reynolds will return to Inwood Investments the safety helmet and camel pack.

### **Costs**

[20] Costs are to lie where they fall.

James Crichton  
Chief of the Employment Relations Authority