

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

Determination Number
WA 41/08
File Number 5076523

BETWEEN JOLENE STOCKMAN-
QUICKE
Applicant

AND JEANETTE WILSON
LIMITED AND THE
DHARMIC TRUST
Respondents

Member of Authority: P R Stapp

Representatives: Applicant in Person
Jeanette Wilson and Emily Dennis-Bishop and Donna
Willard Moore for Respondents in Person

Investigation Meeting: New Plymouth, 27 March 2008

Determination: 16 April 2008

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Jolene Stockman-Quicke is seeking the payment of \$2,790.95 holiday pay and \$647.92 deducted for sick leave for continuous employment with Jeanette Wilson. She is not pursuing a monetary claim for training costs claimed in her documents filed in the Authority. However, she is seeking a determination that the training issue between the parties related to her employment. She is seeking costs for professional fees of \$1,460.40 (\$225 accountant, \$100 doctor and \$1,135.40 lawyer).

[2] Jeanette Wilson Limited and the Dharmic Trust have denied the claims made by Ms Stockman-Quicke. Jeanette Wilson Limited has counter-claimed for \$1,394.29 against Ms Stockman-Quicke for the value of work it claimed was not undertaken before her employment ended. The respondents are seeking their costs.

The Issues

[3] The following issues have emerged:

- Who was Ms Stockman-Quicke's employer? Was she employed continuously by one employer?
- What were the pre-employment arrangements on leave?
- What days did Ms Stockman-Quicke take as annual leave?
- How much leave was Ms Stockman-Quicke entitled to?
- Was the holiday adjustment accurate?
- Was it reasonable for Jeanette Wilson to adjust Ms Stockman's sick leave by deducting 6 days?
- Was a training matter an employment related issue or commercial matter?
- Has the counter-claim by Jeanette Wilson Limited been supported with sufficient evidence?

The Facts

[4] Ms Stockman-Quicke's relationship with Jeanette Wilson involved looking after Ms Wilson's children and working on curriculum and school related work. The curriculum and school related work involved Ms Stockman working from home frequently.

[5] Jeanette Wilson Limited is a registered company incorporated on 21 November 2003. Jeanette Wilson is the sole director and a joint shareholder in the company. Ms Wilson is also a Trustee in the Dharmic Trust. Other Trustees are: Andrew Carter, Donna Willard Moore and Glen Willard.

[6] Ms Stockman-Quicke started looking after Miss Wilson's children from February 2005. Miss Wilson says that Jeanette Wilson Limited employed her for this work. Also, Ms Stockman-Quicke carried out her curriculum writing and school associated work in the afternoons. The Trustees of the Dharmic Trust say the Trust employed her for the curriculum writing and school associated work. Ms Stockman-Quicke and the Trustees signed off an employment agreement dated 30 July 2005 (the Dharmic agreement). This agreement purported to expire on 31 December 2005, but was extended for a few more months. The Dharmic agreement made provision for

permanent and full time employment: Monday to Friday 9.00am to 5.00pm but with provision for a variation of the hours of work. The Trust says Ms Stockman-Quicke was employed part time from 21 February 2005 until 1 August 2005 when she worked fulltime for the Trust until 3 March 2006 when a new arrangement was entered into with Jeanette Wilson [Limited].

[7] Ms Stockman-Quicke says that she believed Miss Wilson and she understood Miss Wilson would allow her to take paid time off for her wedding and honeymoon. Miss Wilson denied this claim. Ms Stockman-Quicke produced an email she sent to Miss Wilson saying that she planned to get married in June and be away for 10 or so days and added “can we make that work?”. Miss Wilson replied “no problem we can plan for that and it also shows that we are not a “school””.

[8] Also, Ms Stockman-Quicke says that it was agreed that Miss Wilson would arrange payment for the continuation of her personal development and qualifications. A \$4,000 payment was made to Ms Stockman-Quicke, but Miss Wilson says this related to a commercial undertaking between them to produce a video.

[9] Ms Stockman-Quicke claimed she had one contract of employment and worked continuously for her “boss”, Jeanette Wilson. She claimed there was one period of employment from 21 February 2005 until 6 December 2006. She claimed she was owed 13 days holiday pay for annual leave between 21 February 2005 and 21 February 2006 totalling \$2,147.60. In addition, she says she is owed 6% gross earnings for the period 22 February to 6 December 2006 that equals \$2,150. She accepts that there has been a part payment of \$1,506.65 to be deducted. Her total claim for holiday pay amounts to \$2,790.95. Also, she has claimed \$647.92 for wages deducted when there was a dispute over her taking sick leave. Her calculations were based on earnings details provided from the IRD.

[10] Miss Wilson says that an employment agreement (called the 2005 Wilson agreement) between Jeanette Wilson Limited and Ms Stockman-Quicke was given to Ms Stockman-Quicke for signing at the same time she was given the Dharmic Trust agreement. Ms Stockman-Quicke agreed that she received an agreement but that it was a draft agreement and denied it had been signed by Miss Wilson. She produced what she says was that draft agreement during the Authority’s investigation, but Miss Wilson challenged her saying that the agreement was a draft of a 2006 agreement, which I will comment on shortly. Suffice to say it appears open to me that there was some confusion surrounding this by both parties although they were steadfast in their opinions on what they say happened.

[11] Miss Wilson says her arrangement for Ms Stockman-Quicke to look after the children involved employment with Jeanette Wilson Limited. Miss Wilson says Ms Stockman-Quicke's employment with Jeanette Wilson Limited started from 21 February 2005 continuing until the end of July 2005 in a part time role in the mornings. Miss Wilson says that she was overseas with the children for more than 4 months in 2005 and could not have been Ms Stockman-Quicke's boss during that time.

[12] In June and July 2005 Ms Stockman-Quicke went overseas on her honey moon (27, 28, 29, & 30 June and 1, 4, 5, 6 7, 8 and there is a dispute over whether or not leave was taken BY Ms Stockman-Quicke on 11 and 12 July 2006. She continued to be paid.

[13] At the end of Ms Stockman-Quicke's employment with Jeanette Wilson Limited on 29 July 2005 and the Dharmic Trust on 3 March 2006 there was no reconciliation of holiday pay completed by them.

[14] Miss Wilson says Ms Stockman-Quicke worked for Jeanette Wilson Limited full time from 6 March 2006 until 6 December 2006. Miss Wilson says Ms Stockman-Quicke was given 2 signed copies of an employment agreement in early 2006 to take away (the 2006 Wilson agreement) and they were not returned by Ms Stockman-Quicke. In August 2006 Ms Stockman-Quicke was given notice of redundancy and given 16 weeks notice of the cessation of her employment to end on 6 December 2006.

[15] Miss Wilson says at a meeting on 28 September 2006 Ms Stockman-Quicke agreed she would use her leave before she left and says at that meeting Ms Stockman-Quicke had a copy of the 2006 Wilson agreement that Miss Wilson says she saw had been signed. Miss Wilson says that she did not take possession of the agreement from Ms Stockman-Quicke. Ms Stockman-Quicke denied having such an agreement and says such an agreement must have been the Dharmic Trust agreement, which she says was the only signed agreement that she referred to. Ms Stockman-Quicke says that she said that she had only taken 2 days leave that year, but Ms Wilson thought that Ms Stockman-Quicke did not have much leave left. Ms Stockman-Quicke says that the agreement was reached for her to take any outstanding leave but only when it was agreed what her remaining leave amounted to. She then set about calculating her entitlement and obtained the help of an accountant. Miss Wilson says she then compiled from her computer and diaries a record of leave taken by Ms Stockman-Quicke, and she entered all the details in holiday books for the company and

the Trust. She agreed during the Authority's investigation that the holiday record books for the company and the Trust were not contemporaneous, but says they can be backed up by her diaries and her computer, although the computer has crashed and the data would be on the hard drive. Miss Wilson says her evidence is supported by her diaries with two entries and emails that she referred to during the Authority's investigation meeting. The Respondents say these support Ms Stockman-Quicke taking leave.

[16] The Dharmic Trust says that Ms Stockman-Quicke was entitled to 15 days holidays and a proportionate amount for the period less than 12 months. It says she took the following days paid holiday during her part time and full time engagements with the Trust:

- 4 days in April 2005 (being extra half days worked on 21, 22, 27, and 28 April 2005). Miss Wilson says it was a mistake by her lawyer to include these as leave when these days should have been added to the Jeanette Wilson Limited entitlement and off set from Ms Stockman-Quicke's honeymoon. Ms Stockman-Quicke says she did not know that this had been done, but says she worked on 29 and 30 April, and that she believed these days would be used in lieu. She says she used them when making a trip to Palmerston North on 4 (1/2 day) and 5 May 2006.
- 6 days in June and July 2005 when Ms Stockman-Quicke was on her honeymoon (being half days on 27, 28, 29 and 30 June and 1, 4, 5, 6, 7, 8, 11 and 12 July 2005). Miss Wilson says that the total 12 half days Jolene took should have been reduced to 8 half days or 4 full days holiday taken because 2 extra days above were worked in lieu.
- 1 day on 26 January 2006
- 1 day on 27 January 2006
- 1 day in February 2006 (being half days on 14 and 15 February 2006).

[17] The Dharmic Trust relied on the wage and time records. The Trust's lawyers concluded that 4 days were owed of \$512.96 (11 having been taken), and \$69.38 (being 6% of \$1,156.40 gross wages for the period 22 February 2006 until 3 March 2006).

[18] Jeanette Wilson Limited says that Ms Stockman-Quicke was employed over two periods involving calculations of 6% of gross earnings (\$9,912.00) for 21 February 2005 until 29 July 2005 that amounted to \$594.74; and 6% gross earnings (\$27,092.80) for 6 March 2006 until 6 December

2006 in the sum of \$1,625.57. Jeanette Wilson Limited says that the following days were taken as leave:

- 6 days in June July 2005 (being half days on 27, 28, 29 and 30 June and 1, 4, 5, 6, 7, 8, 11 and 12 July 2005)
- 1 day on 17 July 2006
- 1 day on 25 September 2006.

[19] The Trust's lawyer calculated that Ms Stockman-Quicke was entitled to \$582.34 that was paid as holiday pay. It was calculated that Jeanette Wilson Limited owed Ms Stockman-Quicke \$1,394.29 but by converting the leave to 8 days for holidays taken and her final pay entitlement she would have had been over paid.

[20] Ms Stockman-Quicke's claim for sick leave related to two weeks sick leave from 9 October 2006 when she was assisting Emily Dennis-Bishop and Jeanette Wilson was away on a South Island tour. She says her pay was docked for 6 days and that she is owed \$647.92. Miss Wilson says that the company paid her for 5 sick days under the contract (for 6 June, 9,10,11 and 12 October 2006) but would not let her return to work under the conditions that Ms Stockman-Quicke tried to impose and in the absence of a medical clearance. Miss Wilson says she could not adjust Ms Stockman-Quicke's pay immediately that it was due because she was on her South Island tour so she adjusted it later and deducted 6 days that Ms Stockman-Quicke was sick and had no leave. Ms Stockman-Quicke says she worked during that time although she had no clearance. She accepted that she had taken one day's sick leave on 6 June.

[21] The termination of Ms Stockman-Quicke's employment is not an issue in the employment relationship problem.

[22] The matter was not settled in mediation. Thus, it has fallen to the Authority to make a determination.

Determination

[23] Before proceeding any further I need to make it clear that I have decided to rely on the wages and time books produced by the company and the Trust for Ms Stockman-Quicke's gross earnings, despite any inadequacies in the wages and time books. The Employment Relations Act

makes the wages and time record the primary record of reference. Ms Stockman-Quicke signed for her wages in the books on various occasions. The books have the pay details of other employees. Ms Stockman-Quicke has not given sufficient evidence for me to conclude that the books should be treated as entirely unreliable and that they have been deliberately misrepresented. Any difference between the wages and time books and the IRD records is an entirely separate matter.

Who Was The Employer?

[24] It is my clear finding that Ms Stockman-Quicke was employed by Jeanette Wilson Limited and the Dharmic Trust. The statement of problem was lodged by Ms Stockman-Quicke against these two entities, and not Miss Wilson, personally. Ms Stockman-Quicke understood from the outset that these two entities existed as she informed me at the Authority's investigation meeting. Further, she signed an employment agreement with the Dharmic Trust. I would point out that there is a difference between supervision during the course of employment, where Ms Stockman-Quicke refers to Miss Wilson as her "boss" and "employer"; and the correct legal name of the employer, which in this case are the legal entities: Jeanette Wilson Limited and the Dharmic Trust.

[25] The circumstances relating to the 2005 and 2006 Wilson agreements remain unexplained and confused. However, I am satisfied that Ms Stockman-Quicke's employment with Dharmic Trust was part time because she was looking after Miss Wilson's children in the morning. It follows that Ms Stockman-Quicke was working part time for Jeanette Wilson Limited. This is a plausible explanation for the two separate and part time engagements, despite the existence of the Dharmic Trust employment agreement providing for full time hours and the unexplained situation of the Wilson 2005 agreement. Ms Stockman-Quicke accepted she had knowledge of a draft agreement in 2005 and the existence of Jeanette Wilson Limited. Also, this is supported by the existence of two separate wage books kept and Ms Stockman-Quicke signing for her wages at least until being paid in to Ms Stockman-Quicke's bank account.

[26] The part time employment was continuous until 29 July 2005 when Ms Stockman-Quicke started work full time for the Dharmic Trust from 1 August 2005 and her employment with Jeanette Wilson Limited ended at the end of July 2005. Her employment then ceased with Dharmic Trust on 3 March 2006 and she became a full time employee of Jeanette Wilson Limited again on 6 March 2006 until 6 December 2006 when her employment terminated for redundancy on notice. The wage records and IRD 330 forms support the arrangement.

Pre-employment Arrangements

[27] Ms Stockman-Quicke says that in their pre employment arrangements Miss Wilson agreed to pay her for time off during her wedding and honeymoon from June 27 to July 28 2005. This is a matter of credibility. I have balanced this matter against the evidence produced by the parties. There was not enough evidence of any arrangement for Ms Stockman-Quicke to be paid for her wedding and honey moon to support Ms Stockman-Quicke's claim. The emails I was referred to were not conclusive and ambiguous, I hold. The details of any arrangement were not committed to writing in specific terms. There was no reference to such a detail in the employment agreement with Dharmic Trust. Even although that agreement was signed off after the wedding and honey moon (30 July 2005) it would have been entirely reasonable to expect something to have been included in it given that any leave would have been an extra entitlement. As such it was reasonable for the company's and Trust's lawyers to have included the time taken off by Ms Stockman-Quicke as part of her annual leave entitlement. Any such agreement was inconsistent with the formal arrangement entered into under the Dharmic agreement. Therefore, the inclusion of that leave by Jeanette Wilson Limited and Dharmic Trust in the final holiday reconciliation was reasonable. That amounted to 6 days in total but off set by the 4 half days or 2 full days worked in April for the two employers each. That requires an adjustment.

How Much Leave Was Stockman-Quicke Entitled To?

[28] I found a reference to an email and 1 ½ days leave in the wage and time book for Jeanette Wilson Limited when Ms Stockman-Quicke says she was "off to the library and be home at 12" on 31 March 2005. I can not find if this was actually deducted, but I conclude such a deduction would have been entirely unreasonable because there was no request for leave and there did not appear to have been any discussion on it being taken as leave at the time and may have been relevant for work. I have given it no other weight.

[29] Dates for leave in April 2005 have been referred to and identified by the company and the Trust. I have noted that Miss Wilson has treated 4 days worked in April would be off set from the 6 honey moon days taken in June and July. Although Ms Stockman-Quicke says she did not know this off set had occurred I find that she used 1 ½ days in lieu on 4 and 5 May that she was paid for. Ms Stockman-Quicke has disclosed taking an afternoon off on 4 May 2006 and a full day on 5 May 2006 when she went to Palmerston North believing these were her lieu days for the work on at least

30 April 2006 when she was employed by Jeanette Wilson Limited. I have kept these days entirely separate in my calculation.

[30] It is common ground that Ms Stockman-Quicke was away on her honey moon (except for a dispute over 11 and 12 July 2005). Miss Wilson never obtained any confirmation from Ms Stockman-Quicke on other days she regarded were taken as holidays by Ms Stockman-Quicke at the relevant time. Ms Stockman-Quicke's days off from her part time employment with the company and Trust must include her honey moon because there was insufficient evidence that there was an agreement they would be paid in addition to her holiday entitlement. I accept that Ms Stockman-Quicke returned to work at least on a half day in the afternoon on 11 July 2005 to be brought up to date upon returning from her honey moon, and was at work for both the company and Trust on 12 July 2005, because of the arrangements made in emails dated 9 July between Miss Wilson and Ms Stockman-Quicke that were produced. This required me proportioning the half day on 11 July and for simplicity, because it is probable Ms Stockman-Quicke went to work during the afternoon to get brought up to date, I have referred to it as a Dharmic Trust ½ day. She was on leave in the morning, I find.

[31] The Respondents have relied upon various documents to support the dates they say Ms Stockman-Quicke took leave. These include:

- The holiday records referred to by Miss Wilson
- The lawyer's calculation and payments made to Ms Stockman-Quicke
- An email dated 27 September 2006 from Ms Stockman-Quicke that she did not realise Miss Wilson needed to know how many holidays she had taken during the year and could not help and saying she took 2 days. Miss Wilson says that tallied with her records.

[32] I am not convinced that Ms Wilson's record on its own is adequate. This is because they are reconstructions prepared for lawyers to calculate holiday entitlements that were extracted by Miss Wilson from her diaries and the crashed computer where the original computer notes have not been produced and were never exchanged with Ms Stockman-Quicke. Ms Stockman-Quicke has supported her claim that she worked on 20 and 21 April 2005 and worked on 29 and 30 April 2005 (not 27 and 28 April), which she believed would be treated in lieu when she needed it. This is also supported by the days being off set for the honey moon by Miss Wilson, although Ms Stockman-Quicke might not have been aware of this until she received the details during the Authority's

proceedings. There are inconsistencies in the wage records and the holiday records for which days were apparently taken off on 27 & 28 or 29 and 30 April 2005. 31 March 2005 and 18 May 2006 was not included.

[33] The above is not enough to verify that Ms Stockman-Quicke was taking leave on all the days Miss Wilson has recalled, I hold.

[34] Ms Stockman-Quicke took 2 days off work as leave on 18 May 2006 and 17 July 2006 when she was employed by Jeanette Wilson Limited, I hold.

[35] This is supported by two email requests from Ms Stockman-Quicke at the time but without the 18 May being recorded by Miss Wilson in her reconstructed record that I can find. They are the only emails of her requesting leave. There was no formal recording system in place, including the employer's responsibility to keep an up to date record, which I was told by Miss Wilson during the Authority's investigation meeting, was compiled from her diaries, and her computer, which subsequently crashed. Miss Wilson says she expected Ms Stockman-Quicke to inform her and request any leave. In my opinion that expectation was not enough to formalise an arrangement on the notification and approval of leave. In any event Ms Stockman-Quicke did do just that at least on two occasions. That on the face of it leaves the employer exposed without other formal arrangements in place and having to reconstruct a leave record after the event. Miss Wilson accepted she never discussed any arrangement with Ms Stockman-Quicke.

[36] The next dates in dispute relate to 26 and 27 January 2006 while Ms Stockman-Quicke was employed with the Dharmic Trust. Ms Stockman-Quicke was in Auckland and she says she was meeting with *her* illustrator and doing research and considered it as part of her work because of the arrangements she believed she and Miss Wilson had discussed. Miss Wilson and the Trustees say this was not related to her work. I agree because the arrangements probably were separate and have a ring of commerciality about them given the commercial setting involved. Also, Ms Stockman-Quicke went to Auckland in July when she applied for a holiday because the Trust was not funding the book and she considered it was no longer work.

[37] The next dates in dispute relate to two half days on 14 and 15 February 2006. Ms Stockman-Quicke says she was working writing an article and produced emails dated 13 February to support her evidence. Miss Wilson could not satisfactorily contradict Ms Stockman-Quicke's

evidence. I conclude that these days were not holidays in the Dharmic Trust. They should not have been included in the final reconciliation of holidays.

[38] I find that leave was taken on 18 May and 17 July 2006 (2 days) when Ms Stockman-Quicke was working for Jeanette Wilson Limited. Although Miss Wilson says she thinks Ms Stockman-Quicke took 3 days in May she provided no adequate proof of this claim, although I note Ms Stockman-Quicke refers to a half day on 4 May and a full day on 5 May. I find that Ms Stockman-Quicke took an extra ½ day believing she was entitled to it as a lieu day and where Miss Wilson has used 4 days worked in April as lieu days and off set them against the honey moon.

[39] Another day included 25 September 2006. Miss Wilson and Emily Dennis Bishop say Ms Stockman-Quicke was in Lower Hutt. Ms Stockman-Quicke says she worked because they had an agreement where during her notice she could take time off to attend job interviews and print her book and try to sell it. She agrees she went to Upper Hutt on 26 September within the terms provided by Jeanette Wilson. I find the trip was a personal matter and not related to finding a new job in the absence of any evidence that Ms Stockman-Quicke was actually being interviewed or pursuing another job. Therefore this day should have been leave, I hold.

Conclusion on Leave Taken

[40] I find that leave was taken by Ms Stockman-Quicke in the Dharmic Trust on: ½ days on 27, 28, 29 and 30 June 2005, & 1, 4, 5, 6, 7 and 8 July 2005, and 26 & 27 January 2006.

[41] I find that when she worked for Jeanette Wilson Limited leave was taken on ½ days on 27, 28, 29, 30 June 2005, & 1, 4, 5, 6, 7, 8 & 11 July 2005, and full days on 18 May, 17 July and 25 September 2006. In addition I find that 1 ½ days were taken on 4 and 5 May 2006.

[42] The Dharmic Trust credited Ms Stockman-Quicke with 15 days entitlement to annual leave for the period 21 February 2005 until 21 February 2006 and an entitlement of 6% from 22 February 2006 until 3 March 2006. Her Holiday pay was calculated as \$582.34 because the trust calculated she had 4 days left, having taken 11 days (at \$128.24 per day), and 6% of her gross earnings (\$1,156.40) for the period 22 February 2005 to 29 July 2005 was \$69.38.

[43] I find that Ms Stockman-Quick took 5 days for her honey moon but returned to work in the afternoons of 11 and 12 July 2005 for two ½ days (1 day). Two lieu days have to be credited to Ms

Stockman-Quicke for work in April 2005. January 26 and 27 were taken as leave and paid. Two half days (or 1 day) have to be deducted for 14 and 15 February 2006 which was not leave. In total I find there was 5 days leave taken. That leave was worth \$641.20. She was entitled to 8 further days for annual leave totalling \$1,025.92 (that the trust calculated as 4 days) and \$69.38 for her proportionate holiday pay.

[44] I now turn to Ms Stockman-Quicke's first period of employment with Jeanette Wilson Limited from 21 February 2005 until 29 July 2005 where her gross earnings were \$9,912 and 6% of this was \$594.72. It was not challenged that the daily earnings were \$82.60 per day. Deducting 5 ½ days for the honeymoon (accounting for ½ day on 11 July 2005 as leave) leaves \$140.42 owing. The 2 days worked in April 2005 as days in lieu have to be credited to Ms Stockman-Quicke, which would be \$165.20 in addition.

[45] Her gross earnings for the period from 6 March 2006 until 6 December 2006 with Jeanette Wilson Limited were \$27,092.80. Six percent of this was \$1,625.57. It was not challenged that this was \$165.20 per day. Deductions are needed for 17 July 2006, 18 May 2006 and 25 September 2006 for three days leave taken (\$495.60) when she was paid. The amount is \$1,129.67.

[46] Ms Stockman-Quicke's leave on 4 and 5 May 2006 was not calculated into the equation by Jeanette Wilson Limited. She was paid for the 1 ½ days at the time. This would amount to \$247.80 in total. Therefore, in equity and good conscience this should be deducted from the amount due to Ms Stockman-Quicke to reconcile holidays taken in advance. This gives a total for reconciled leave of \$882.17.

Sick Leave

[47] I now turn to the sick leave matter. Ms Stockman-Quicke was only entitled to 5 days sick leave under the Dharmic agreement. In the absence of a signed agreement being produced for the employment arrangement involving Jeanette Wilson Limited, the statutory requirements for sick leave entitlements under the Employment Relations Act apply. Therefore, Ms Stockman-Quicke had used her entitlement with 5 days that she became eligible for after 6 months. She was not entitled to more and the off setting of 6 days was lawful to recover the payment made in the next fortnightly pay under the Wages Protection Act. Ms Stockman-Quicke is not owed any further wages for that period.

Counter-Claim on Wages from Jeanette Wilson Limited

[48] Jeanette Wilson Limited can not now claim a recovery of wages for work that it says was not completed. There is a clear difference of opinion about the quantity and quality of what Ms Stockman-Quicke completed during her notice period. The fact that she worked from home frequently and the failure of the employer to have completed any formal appraisal and did not have an agreed process for an appraisal does not satisfy me that such a claim can be supported. Also, there was no contractual term to recover any wages for poor performance and failure to complete work properly. Indeed to even contemplate that such a recovery should apply requires a proper procedure involving notice during the employment. Therefore, I have decided to dismiss the counter claim.

Was training an employment related issue or a commercial matter?

[49] The final matter related to the training and whether or not it was employment related. Ms Stockman-Quicke has raised this to try and stop Jeanette Wilson Limited pursuing her on a commercial arrangement for any payments on training, other than stating the principles surrounding the training. There was no specific contractual arrangement entered into by the parties under the employment agreements. The emails and correspondence were not sufficient to support Ms Stockman-Quicke's allegation of being entitled to any payment for her video and book continuing. Given that the parties' reasons are different for the payment that was made leads me to conclude the issue exists outside the employment relationship, especially as the parties did have the commercial matter between them over a video and Ms Stockman-Quicke has her own company for her own writing. Finally there is the matter of training and an element of this was recognised at the time Ms Stockman-Quicke commenced employment, however, the evidence is not sufficient that the employer had committed to any reimbursement of training fees and expenses, I hold.

Costs

[50] Both parties have applied for costs. It is my decision that costs are to lie where they fall. In other words the parties are to meet their own costs. My reason for this is that the costs were incurred prior to any involvement in the Authority. Both parties did their own preparation for the investigation by compiling their evidence, documents and lawyers' and accountants' calculations. The employer has to take responsibility for the mess it made of its records that required some professional help. In the absence of wages and time records being produced when requested it was

reasonable that the Applicant's professional help relied upon IRD records, but once the wages records were produced these are the primary documents in an employment setting that had to be relied upon to calculate wage and time and holiday entitlement. The employer had the benefit of Ms Stockman-Quicke's filing fee of \$70 when a counter claim was lodged in an amended statement in reply. The employer did not pay a filing fee. It is not entitled to reimbursement. Ms Stockman-Quicke's filing fee related to the main issues and since she was not successful the employer is not required to reimburse her for this fee.

Summary of Findings

[51] Dharmic Trust is responsible for:

- \$1,025.92 annual leave entitlement for 8 days
- \$69.38 proportionate holiday pay.

[52] The total amounts to \$1,095.30.

[53] Jeanette Wilson Limited is responsible for:

- \$140.42 holiday entitlement for the period 21 February 2005 until 29 July 2005.
- \$165.20 by agreement two days in lieu from April 2005
- \$882.17 holiday entitlement for the period from 6 March 2006 until 6 December 2006

[54] The total amounts to \$1,187.79.

[55] The above sum includes the deduction for the sum of \$247.80 paid for leave taken for 1 ½ days on 4 and 5 May 2006 that was not calculated when it should have been. Also, Ms Stockman-Quicke was paid sick leave that she was not entitled to and a deduction of \$660.80 was made. This sum also needs to be deducted and leaves a total of \$526.99.

[56] I find the Trust and the company say they paid \$582 and \$1,394 final payment respectively (\$1,976) to Ms Stockman-Quicke on or about 22 December 2006 that has to be deducted. The total I calculate she would have been owed was \$1,622.29 (\$526.99 plus \$1,095.30). She has been overpaid. Indeed the overpayment would be more if the calculation is based on a different sum that Ms Stockman-Quicke says she was paid in her final payment of (\$1,506.65). There has been no claim made for any overpayment and the employers waived any over payments being recovered.

To bring closure to the employment relationship problem Ms Stockman-Quicke should now accept what her employer(s) have/has been saying to her all along that they do not owe her any more money in her employment relationship problem.

[57] Ms Stockman-Quicke's claims for holiday pay and sick pay are dismissed.

[58] The Jeanette Wilson Limited counter claim is dismissed.

[59] There is no order for any costs. Costs are to lie where they fall for both parties.

P R Stapp
Member of the Employment Relations Authority