

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 123
5346211

BETWEEN VIKRAM SUBRAMANIAM
Applicant

AND TGH LIMITED
Respondent

Member of Authority: Dzintra King
Representatives: Applicant in Person
Didier Debae, Advocate for Respondent
Hearing: 22 February 2012
Additional Evidence Received: 6 March 2012
Determination: 11 April 2012

DETERMINATION OF THE AUTHORITY

[1] The applicant, Mr Vikram Subramaniam, seeks payment of unpaid wages, payment for two statutory holidays: 22 April Easter Friday and 25 April Easter Monday/Anzac Day. He seeks payment of the 30 days notice period and says that money was illegally deducted from his wages for accommodation.

[2] The respondent accepts that Mr Subramaniam is entitled to be paid time and a half for the two statutory days and to be paid for the 2 days in lieu. It also accepts he should be paid the contractual notice period of 30 days.

[3] The commencement date of Mr Subramaniam's employment was disputed. The respondent says he did not start until 16 April. Mr Subramaniam accepts that initially he was not physically at the hotel premises as the premises were being developed. He says he did work on menus, interviewed potential staff and looked for equipment. I have taken the commencement date as being that in the employment

agreement: 4 April 2011. It is agreed that the last day of work was 19 May 2011 and his last pay was calculated to that date.

[4] The period from 4 April to 15 May is 6 weeks. Mr Subramaniam worked an additional three days to 19 May. Mr Subramaniam's pay was \$50,000 per annum. For the period of his employment he should have been paid \$961.54 gross per week. Six weeks wages comprises \$5769.24. Adding an additional 4 days payment till 19 May 2011 of \$769.24 gives a total of \$6538.48. I have included in this calculation the two statutory days worked by Mr Subramaniam but have not included the penal rate payment. Including the penal rate payment of \$96.15 per day for 2 days, a total of \$192.31, gives an overall total of \$6730.79 gross.

[5] Holiday pay on that amount at 8% is \$538.47 gross.

[6] I asked the respondent to supply time and wages records. What was eventually forthcoming were IRD PAYE calculations for the period 1 April 2011 to 31 March 2012. These show that the respondent made total payments of \$3434.07 gross to the applicant from the pay period starting 25 April 2011 to the pay period 16 May 2011. Deducting the amount that was paid from the amount that should have been paid leaves an unpaid total of \$3296.72.

[7] As agreed, Mr Subramaniam is to be paid the notice period of 30 days being \$4038.47 gross.

[8] Mr Subramaniam is entitled to be paid 2 days in lieu for working the 2 public holidays. That payment is \$192.31 gross per day being \$384.62 gross for the two days.

[9] The remaining issue is the money deducted by the respondent for accommodation. I am satisfied that there was an oral agreement that Mr Subramaniam would pay TGH Limited the sum of \$100 per week. It does not form part of the written contract.

[10] Section 4 Wages Protection Act 1983 provides that there are to be no deductions from wages except in accordance with the Act. Subject to ss 5(1) and 6(2) an employer is to pay the entire amount of wages to the worker without deduction.

[11] Claims on behalf of employers to a right to set off claims against the worker from wages owing have been unsuccessful. In [*Inspector of Awards v Perry*](#) [1982] ACJ 51, the Court found that the worker owed money to the employer for the cost of materials and the use of a vehicle. The employer did not dispute that wages and holiday pay were owing to the worker, but sought to establish a set-off of the money owed by the worker. The Court held that the provisions of ss 4(1) and 4(2) of the Wages Protection Act 1964 completely precluded the application of any set off. The Court also held that to grant relief to the employer under the Court's equity and good conscience jurisdiction would be completely contrary to the clearly expressed mandatory provisions of the Act.

[12] Section 5(1) provides for deductions with the worker's consent. An employer is able to make deductions with the written consent of the worker on the written request of the worker. There is no written consent or request so the deductions were contrary to the Act. Section 6 relates to overpayments and is not applicable in the circumstances of this case.

[13] The applicant is to be reimbursed the filing fee of \$71.50.

[14] In summary, the following payments are to be made by the respondent to the applicant:

1. Unpaid wages, including the two statutory days and penal rates, of \$3296.72 gross.
2. Holiday pay of \$538.47 gross.
3. Thirty day notice period of \$4038.47 gross.
4. Two days in lieu being \$384.62 gross.
5. Filing fee of \$71.50.

Dzintra King

Member of the Employment Relations Authority