

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2017] NZERA Christchurch 96
3007971

BETWEEN BENJAMIN SWANSON
Applicant

AND IDRAFT LIMITED
Respondent

Member of Authority: Andrew Dallas

Representatives: Applicant in person
No appearance for the Respondent

Investigation Meeting: On the papers

Determination: 15 June 2017

DETERMINATION OF THE AUTHORITY

- A. IDRAFT Limited (IDRAFT) must pay Benjamin Swanson within 28 days of the date of this determination:**
- (i) \$8,111.28 gross as unpaid wages;**
 - (ii) \$206.25 as unpaid bonus;**
 - (iii) \$960.96 gross as deducted, but not remitted, student loan repayments;**
 - (iv) \$527.28 gross as deducted, but not remitted, KiwiSaver contributions; and**
 - (v) \$511.94 gross as KiwiSaver employer contributions.**
- B. IDRAFT must also pay Mr Swanson within 28 days of the date of this determination \$71.56 as reimbursement of the Authority's filing fee.**

Employment relationship problem

[1] Benjamin Swanson was employed by IDRAFT Limited (IDRAFT) as an architectural designer from 25 August 2016 until 8 March 2017. Mr Swanson's employment was governed by an individual employment agreement.

[2] Mr Swanson claims he is owed unpaid wages, unpaid bonus, deducted, but not remitted, student loan repayments and KiwiSaver contributions.

[3] Mr Swanson sought to recover these outstanding amounts directly from IDRAFT. His efforts over several months to obtain wage records and recover these amounts from IDRAFT proved fruitless.

Issues

[4] The following is the issue for determination by the Authority:

- (i) Is Mr Swanson owed wages by IDRAFT?
- (ii) Is Mr Swanson owed unpaid bonus by IDRAFT?;
- (iii) Is Mr Swanson owed deducted, but not remitted, student loan repayments by IDRAFT?;
- (iv) Is Mr Swanson owed deducted, but not remitted, KiwiSaver contributions by IDRAFT?; and
- (v) Is Mr Swanson owed KiwiSaver employer contributions by IDRAFT?

The Authority's investigation

[5] Mr Swanson lodged a statement of problem in the Authority seeking payment of the outstanding wages, unpaid bonus, deducted, but not remitted, student loan repayments, deducted, but not remitted, KiwiSaver contributions and KiwiSaver employer contributions.

[6] IDRAFT did not lodge a statement in reply or seek leave to lodge one out of time. The Authority also had no communication from IDRAFT's sole director, Megan Lawson. I am satisfied that IDRAFT was properly served by the Authority.

[7] Having taken into account the surrounding circumstances outlined above, I decided to investigate Mr Swanson's employment relationship problem on the papers under s 174D of the Employment Relations Act 2000 (the Act).

[8] As Mr Swanson had sought wage and time records from IDRAFT and these were not forthcoming, Mr Swanson was asked by the Authority to quantify his wages and other claims.

[9] Mr Swanson subsequently provided these calculations to the Authority. He said he was owed \$8,111.28 gross as unpaid wages, unpaid bonus of \$206.25, \$960.96 as deducted, but not remitted, student loan repayments and KiwiSaver contributions: \$511.94 gross (employer) and \$527.28 gross (employee).

[10] On 19 May 2017, a Member's Minute was issued to the parties setting out the nature of Mr Swanson's employment relationship problem. IDRAFT was asked to provide written comment on Mr Swanson's claims. Neither IDRAFT nor an authorised representative on its behalf provided written, or other, comment.

Mr Swanson's claims for unpaid wages

[11] Mr Swanson claimed that he was owed outstanding wages. He claimed the amounts owed were \$8,111.28 gross as unpaid wages. Mr Swanson provided calculations and other information to justify this claim.

[12] IDRAFT failed to produce wage and time records to assist Mr Swanson in the calculation of the claim for wages. In the absence of any information from IDRAFT disproving the claim and in reliance on s 132(2) of the Act, I accept Mr Swanson's claims for unpaid wages.

[13] IDRAFT must pay Mr Swanson \$8,111.28 gross as unpaid wages within 28 days of the date of this determination.

Mr Swanson's claims for unpaid bonus

[14] Mr Swanson said he was owed \$206.25 as unpaid bonus. He provided a calculation and other information in support of this claim. Mr Swanson's claim was not disproved or otherwise contradicted by IDRAFT. On the above bases, I am prepared to accept Mr Swanson's claim is made out.

[15] IDRAFT must pay Mr Swanson \$206.25 as unpaid bonus within 28 days of the date of this determination.

Mr Swanson's claim for student loan repayments

[16] Mr Swanson said he was owed \$960.96 gross as deducted, but not remitted, student loan repayments by IDRAFT. He provided a calculation and other information in support of this claim. Mr Swanson's claim was not disproved or otherwise contradicted by IDRAFT. On the above bases, I am prepared to accept Mr Swanson's claim is made out

[17] IDRAFT must pay Mr Swanson \$960.96 gross as deducted, but not remitted, student loan repayments within 28 days of the date of this determination.

Mr Swanson's claims for KiwiSaver contributions

[18] Mr Swanson said he was owed \$527.28 gross as deducted, but not remitted, KiwiSaver contributions and \$511.94 as KiwiSaver employer contributions. He provided calculations and other information in support of these claims. Mr Swanson's claim was not disproved or otherwise contradicted by IDRAFT. On the above bases, I am prepared to accept Mr Swanson's claims are made out.

[19] IDRAFT must pay Mr Swanson \$527.28 gross as deducted, but not remitted, KiwiSaver contributions and \$511.94 as KiwiSaver employer contributions within 28 days of the date of this determination.

Costs

[20] It is fair and reasonable in all the circumstances to require IDRAFT to reimburse Mr Swanson for the Authority's filing fee of \$71.56. This amount must also be paid to Mr Swanson within 28 days of the date of this determination.

Andrew Dallas
Member of the Employment Relations Authority