

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 113/08
5111464

BETWEEN JAMES TAHERE
 Applicant

AND CINEMA 3 LIMITED
 Respondent

Member of Authority: Marija Urlich

Representatives: In person, for Applicant
 No appearance for Respondent

Investigation Meeting: 26 March 2008

Determination: 27 March 2008

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Tahere was employed by Cinema 3 Limited as manager/head projectionist at the company's Tokoroa cinema until November 2007. He had a written employment agreement which included an hourly rate of \$20 and full time hours of work. Mr Tahere seeks wage arrears totalling \$51,145.50 (nett) for the period 4 January 2006 until 22 October 2007. Mr Tahere raised at the investigation meeting that he has not received any holiday pay or payment for public holidays worked.

[2] Cinema 3 has not filed a statement in reply.

[3] The parties have attended mediation at the direction of the Authority.

[4] There was no appearance on behalf of the respondent at the scheduled Investigation Meeting. I am satisfied that the respondent was served with the Statement of Problem and Notice of Investigation Meeting. Prior to the commencement of the investigation meeting I had the Support Officer contact the

respondent to ascertain whether or not the respondent would be appearing. The support officer advised that the registered office of the company and the address for service advised all correspondence received from the Authority had been passed on to the director of the company, Peter Puschmann. The support officer then telephoned Mr Puschmann's residence and was advised by an unidentified woman that Mr Puschmann was attending to a recent family bereavement. The support officer then telephoned Mr Puschmann's mobile telephone and left a message to ascertain whether or not he would attend the investigation meeting.

[5] As I was satisfied that the respondent has been given the opportunity to defend the matter before me, that it has been advised of the consequences of failure to attend a hearing and has not advised the Authority of any reason why it could not attend the scheduled Investigation Meeting I proceeded to hear and determine the matter in accordance with the provisions of Clause 12 of the Second Schedule of the Act.

[6] Later on 26 March 2008 Mr Puschmann contacted the Support Officer and advised he did not know about the investigation meeting. Mr Puschmann was advised that he can apply for the investigation to be reopened or may file a challenge to this determination in the Employment Court.

Wage arrears

[7] Mr Tahere has provided pay slips and wage records for the period in question. They are attached to this determination. These documents support Mr Tahere's wage arrears claim and were created by Junior Bennett, an employee of Cinema 3 Tokoroa. Mr Bennett attended the investigation meeting and confirmed he created these documents in his capacity as pay clerk. I accept that is the case.

[8] Mr Tahere said he continued to work at Cinema 3 despite the growing wage arrears because he enjoyed the work and received assurances from Mr Puschmann that he would be paid.

[9] To determine this employment relationship problem I must rely solely on the material supplied by Mr Tahere. This is because the respondent has not provided any information despite having had a fair opportunity to do so.

Holiday Pay

[10] Mr Tahere's holiday pay claim was first raised at the investigation meeting. Cinema 3 Limited is not on notice of this issue and in these circumstances it would be unfair to determine this issue. Mr Tahere's holiday pay entitlement totals \$4225.44 (6% of total gross earnings for the period of claim). He could refer this matter, along with the public holiday entitlement claim, to the Labour Inspectorate.

Determination

[11] I find the claimed sum is owed to James Tahere and order Cinema 3 Limited to pay him \$51,145.50 (nett).

Costs

[12] Cinema 3 Limited is to reimburse Mr Tahere the \$70 filing fee incurred in lodging this application with the Authority.

Marija Urlich

Member of the Employment Relations Authority