

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 130/07
5092561

BETWEEN Waikaremoana Te Kohanga
 Reo
 Applicant

AND Barbara Anderson
 Respondent

Member of Authority: Denis Asher

Representatives: Atiria Pouwhare for the Kohanga Reo
 No appearance by or for Ms Anderson

Investigation Meeting Napier, 13 September 2007

Submissions No submissions were required

Determination: 17 September 2007

ORAL DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

- [1] In its statement of problem filed in the Authority on 2 July 2007 the Kohanga Reo said that it had overpaid Ms Anderson and its efforts to recover the monies, \$690.54, had been unsuccessful. It asked that Ms Anderson be directed to repay that amount at either \$50 or \$20 per week.
- [2] No statement in reply has been received from Ms Anderson.

- [3] The parties have not undertaken mediation in respect of this employment relationship problem.
- [4] During a telephone conference on 2 August, to which Ms Anderson was invited but did not make herself available, I directed that this matter be set down for an investigation in Napier on 13 September 2007.

Decision to Proceed with the Investigation

- [5] Notwithstanding Ms Anderson's absence I determined to proceed with the investigation on 13 September as I was satisfied the respondent had been properly informed of the investigation and had provided no good reasons for her failure to participate. I reached this decision as a result of taking into account the following:
- a. The statement of problem was delivered to the respondent's address as provided by the applicant: the Authority has a record of the statement of problem being delivered on 5 July and being signed for by "*Anderson*".
 - b. The applicant subsequently served on Ms Anderson personally, in Wairoa on 25 August 2007, copies of the statement of problem and the notice of investigation: Ms Pouwhare's affirmed evidence at the Authority's investigation on 13 September.
 - c. Ms Anderson telephoned the Authority on 6 September and spoke to a support officer about this employment relationship problem: Ms Anderson confirmed she had been handed the notice of investigation. She also advised her address was 20 Chamberlain Avenue (not 32, as given on the statement of problem), Wairoa. Acting on instruction from me, the Authority support officer subsequently telephoned Ms Anderson and said the investigation would proceed on the scheduled date unless she provided good reason why it should not and/or reached agreement with the Kohanga Reo as to its claim. Ms Anderson advised she did not owe the Kohanga Reo any monies, that the sum claimed was her holiday pay and that she would communicate to the Authority her reasons why she believed the investigation should not proceed: no communication was received by the Authority.

d. At the commencement of the Authority's investigation on 13 September I telephoned the mobile telephone number provided by Ms Anderson and spoke to a person who confirmed she was Ms Anderson: Ms Anderson said she knew of the investigation and that she would not be present. Ms Anderson confirmed she had undertaken to the Authority support officer to provide reasons why she believed the investigation should not proceed but had failed to do so. While describing in general terms that the date of 13 September was not convenient for her the respondent gave no specific or coherent reasons that satisfied me it was fair and reasonable to accept her request. Ms Anderson was similarly non-specific in response to my inquiry as to why she had been unable to address and resolve this conflict with her previous employer. I advised Ms Anderson of my decision that the investigation would proceed: ss. 160 & 173 of the Act applied. I repeated my suggestion that she should contact the Kohanga Reo in the meantime to attempt to resolve this issue

Background

- [6] I am satisfied from the evidence provided by Ms Pouwhare and the Kohanga Reo as to the following relevant facts and events.
- [7] The Kohanga Reo is an early child care centre whose main focus is total immersion in Te Reo Maori. It is located in an isolated rural community with the nearest township, Wairoa, a 45-minute drive south.
- [8] Ms Pouwhare's evidence was that Ms Anderson resigned or ceased work effectively on 22 December 2006 but, by administrative oversight, the Kohanga Reo continued to pay her wages for 27 December 2006, and 3 and 9 January 2007, i.e. 3 weekly payments of \$230.18, or \$690.54.
- [9] Attached to the statement of problem is a letter of resignation from Ms Anderson dated 15 January 2007. Also attached to the statement of problem is a wages & time record that indicates Ms Anderson worked the week finishing 27 December 2006: I repeat again Ms Pouwhare's evidence that, having drawn this anomaly to her attention, she reiterated the respondent's last day of work was 22 December and the wages & time record was in error. There is no evidence before the Authority contradicting that claim.

- [10] The same wages & time record records a payment of annual leave to Ms Anderson totalling \$162.50, on 22 December. There is no evidence before the Authority in support of the respondent's telephoned claim that the monies sought by the Kohanga Reo was in fact her holiday pay.
- [11] Also attached to the statement of problem are 3 letters dated 7 & 26 February and 28 March 2007 from the Kohanga Reo to Ms Anderson at a Tuai address, advising her of the overpayments and seeking repayment arrangements of \$100 a fortnight. There is no record of Ms Anderson answering those claims.
- [12] During my telephone conversation with Ms Anderson on 13 September she advised she was on the domestic purposes benefit and she was unable or would have difficulty in repaying the monies: no other details of her financial circumstances were provided.

Discussion and Findings

- [13] The uncontested evidence before the Authority is that an overpayment of \$690.54 was made by the Kohanga Reo to Ms Anderson. I am satisfied that, by service of the statement of problem with its attachments, Ms Anderson has enjoyed the opportunity to fully consider and respond to this claim. No evidence has been provided by the respondent to the Authority contesting the claimed overpayment, other than an assertion the monies are her holiday pay. I do not accept that claim as the wages & time record shows a separate holidays payment on 22 December 2006.
- [14] I was therefore satisfied that claim had been made out and, consistent with the repayment schedule proposed by the Kohanga Reo in its statement of problem, that it was appropriate the respondent repay the monies at \$50 per week. I gave Ms Pouwhare an oral determination to that effect.

Determination

- [15] For the reasons set out above this determination records of oral decision in favour of the Kohanga Reo's claim to recover an overpayment of \$690.54: Ms Anderson is to pay that amount by way of weekly repayments of \$50 commencing 29 days from the date of this determination, i.e. from 22 October 2007 and continuing thereafter until the overpayment is fully repaid.
- [16] Costs are reserved. I note her that the only likely costs claim is that of the \$70.00 filing fee. Subject to Ms Anderson's views it would make sense to repay that amount also by way of the \$50 per week repayment schedule.

Denis Asher

Member of the Employment Relations Authority