



[4] Wages were typically paid against a payslip and the latter were regularly provided. On occasions, Ms Williams says that the payslip was provided but that wages were not actually banked in her account and she would have to follow this up when it occurred.

[5] Although she was a casual employee, I am satisfied on the evidence before the Authority that holiday pay was not included in her hourly rate because Ms Eisenhart provided Ms Williams with a statement calculating how much holiday pay she had accumulated for the period. Although that document is not available to the Authority, Ms Williams thinks that it indicated total holiday pay of a little under \$400 for the period in dispute.

[6] Ms Williams says that Ms Eisenhart had a good computer system and kept proper records and so presumably the holiday pay due and owing to Ms Williams ought to be readily calculable.

### **Bringing the matter to the Authority**

[7] Ms Williams gave evidence at the investigation meeting that she had spent the bulk of last year endeavouring to obtain payment of the outstanding moneys but had not been successful. She indicated that she had made numerous unsatisfactory attempts to get Ms Eisenhart to address the matter. She claims to have telephoned Ms Eisenhart over ten times asking for her money, sent emails and even spoken to Ms Eisenhart face to face, but all without success.

[8] Eventually Ms Williams became disgruntled at the lack of progress and filed her claim in the Authority.

[9] Ms Eisenhart participated in the telephone conference which I convened between the parties on 14 December 2009. I directed that the parties were to meet with each other and make arrangements about the payment of Ms Williams's holiday pay.

[10] During the telephone conference, Ms Eisenhart freely admitted that she owed the holiday pay, but denied that she owed the other moneys as she indicated that these sums were contract amounts, not wages, and were in dispute.

[11] Given the admission that the holiday pay was owed, I directed the parties to engage with each other in the hope that the matter could be resolved by agreement. Although that meeting did take place prior to the investigation meeting, it resolved nothing with Ms Eisenhart continuing to maintain that she owed the money but telling Ms Williams that she would ring Ms Williams in February and make arrangements for payment.

[12] The money has been due and owing for over 12 months, and Ms Eisenhart has consistently avoided addressing the issue with Ms Williams. That is not acceptable and is not an example of good faith behaviour by an employer.

[13] In my opinion, Ms Williams has been extraordinarily patient and Ms Eisenhart has simply ignored her obligations.

[14] At the appointed time for the commencement of the investigation meeting, Ms Williams attended at the Authority's offices and Ms Eisenhart did not. My support Officer contacted Ms Eisenhart to remind her of the commitment but the telephone went immediately to voicemail and accordingly a message was left to the effect that the investigation meeting was due to commence and would proceed in her absence unless we heard from her by return. No return message was received and accordingly I elected to proceed with the investigation meeting. There had been no indication from Ms Eisenhart at the directions conference on 14 December 2009 that she was not going to attend the investigation meeting and given that the earlier meeting between the parties had not resolved the matter, the investigation meeting was of course still required.

[15] Ms Williams gave her evidence on oath and provided me with all of the responses that I required in order for the Authority to dispose of this matter.

### **Determination**

[16] I am satisfied that Ms Williams is owed holiday pay for the 12 months period from approximately March 2008 to approximately March 2009 and I direct that Ms Eisenhart is to pay the amount of outstanding holiday pay to Ms Williams forthwith.

[17] I assume that Ms Eisenhart's payroll system has retained the information about Ms Williams' entitlement to holiday pay and that the amount outstanding is readily discernible.

[18] In addition, Ms Eisenhart is to pay to Ms Williams \$70 to reimburse Ms Williams for the Authority's filing fee and a further \$200 is to be paid as a contribution to Ms Williams's costs in pursuing this matter including interest lost on the money which ought to have been paid promptly in March 2009.

[19] Ms Williams' claim includes the payment of wages for two weeks in April. That amount is disputed. Ms Eisenhart says that these are contract sums in dispute and not wages at all. Ms Williams told me in her evidence that she had agreed with Ms Eisenhart not to pursue the two weeks wages claimed if she was paid her holiday pay.

[20] Ms Williams is very clear that she made that promise to Ms Eisenhart and on that basis I do not direct that Ms Eisenhart is to pay those sums.

[21] Accordingly, Ms Eisenhart is to pay to Ms Williams forthwith the following sums to resolve the employment relationship problem:

- (a) Holiday pay for the period from March 2008 to March 2009, which would appear to be in the order of \$400.
- (b) A contribution to Ms Williams's costs which I fix at \$200.
- (c) Reimbursement of the filing fee of \$70.

[22] As neither party was represented by an adviser, there is no issue about legal costs as such.

James Crichton  
Member of the Employment Relations Authority