



[4] Mr Williams was neither present nor represented at the investigation meeting though that did not come as a surprise given his failure to participate in the Authority's process. The absence does, however, raise the question of whether or not it is appropriate to proceed.

[5] Given Mr Williams' failure to respond I instructed Mr Winsloe to personally serve the notice of investigation meeting. Mr Winsloe attests to having done so both in writing and orally. I accept his evidence.

[6] The notice of investigation includes advice that should a respondent fail to appear the Authority may proceed and issue a determination in favour of the applicant. I am therefore satisfied Mr Williams is aware of the meeting and the consequences of non-attendance.

[7] In the absence of an explanation for his absence I consider it appropriate to continue. Mr Winsloe is entitled to have his claim resolved.

### **Determination**

[8] Mr Winsloe was employed by Mr Williams as a roofer. He claims he has been underpaid by \$5,827.84 net. The underpayments arise for two reasons. First there have been instances where Mr Williams made wage payments to Mr Winsloe's bank account but the monies were subsequently withdrawn by the bank as Mr Williams could not honour them. Second there were occasions upon which Mr Williams failed to make payments due during the 2012/2013 Christmas close down which would, had they been made, have constituted Mr Winsloe's holiday pay.

[9] Mr Winsloe also states he has been charged interest and incurred unarranged overdraft fees as a result of the dishonoured payments. These total \$140.57.

[10] Mr Winsloe's claim is supported by considerable documentary evidence in the form of bank statements and letters from his bank. Their content raised some issues about which I questioned him. As a result, the original claim has been amended to a small extent.

[11] Given Mr Winsloe's answers and the content of the supporting documents I conclude he is owed the sum of \$5,703.85 net. PAYE will be additional but a lack of wage records means the amount is unknown. Payment shall be ordered accordingly.

[12] That raises section 132 of the Employment Relations Act 2000 which provides where there is a failure to keep or produce wage records I may accept the claim unless the respondent can prove it is incorrect. There are no time and wage records and the respondent has produced no evidence to challenge Mr Winsloe's assertion he has been underpaid.

[13] I also conclude Mr Winsloe should be reimbursed the interest and fees he incurred. These are damages which flow from Mr Williams' failure to honour his contractual requirement to pay for Mr Winsloe's work and which were, I conclude, reasonably foreseeable.

[14] Mr Winsloe has been successful with his claim. He is therefore entitled to a contribution towards the costs he incurred in pursuing it. There is no legal representation and recoverable costs are limited to the Authority's filing fee of \$71.56. I believe it appropriate Mr Winsloe be recompensed accordingly and will order payment of the fee in addition to the above amounts.

### **Orders**

[15] For reasons outlined above, I therefore order Mr Williams to pay to Mr Winsloe the sum of \$5,915.98 (five thousand, nine hundred and fifteen dollars and ninety eight cents) in respect to outstanding wages and holiday pay, recompense of fees incurred as a result and costs.

[16] Mr Williams must also ensure an appropriate amount of PAYE is forwarded to Inland Revenue.

[17] Payment is to be made, in full, within 14 days of this determination.

M B Loftus  
Member of the Employment Relations Authority