

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2011] NZEmpC 50
ARC 22/09**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

BETWEEN RAUKURA HAUORA O TAINUI TRUST
Plaintiff

AND JUANITA NATHAN
Defendant

Hearing: On the papers
(in response to memoranda filed by counsel)

Counsel: Mr Richard Harrison, Counsel for the Plaintiff
Mr Ross France, Counsel for the Defendant

Judgment: 25 May 2011

SUPPLEMENTARY JUDGMENT OF JUDGE A D FORD

[1] In my substantive judgment dated 30 November 2010¹ I upheld the plaintiff's challenge and awarded damages against the defendant in the sum of \$24,639.20 along with interest at the appropriate 90-day bill rate plus two percent from 29 February 2008 down to the date of payment. I also awarded the plaintiff costs to be agreed, failing which a memorandum was to be filed by the plaintiff's counsel within 21 days.

[2] No memorandum was filed within the 21 day period but on 21 March 2011 the Court Registrar received advice from the plaintiff's lawyers to the effect that they had been in contact with Mr France, counsel for the defendant, and they had been informed that his building and staff had been affected by the Christchurch earthquake.

¹ [2010] NZEmpC 156.

[3] The next development occurred on 11 April 2011 when counsel for the plaintiff filed a memorandum confirming that, as the defendant had been granted legal aid in connection with the case, his client would not be seeking reimbursement of its costs. Mr Harrison did, however, seek interest on the judgment sum in the amount of \$3,843.72 which he had calculated using the 90-day bill rate (3.2 percent) plus two percent. Counsel, therefore, sought a sealed judgment in the total amount of \$28,482.92.

[4] On 10 May 2011, Mr France filed a “Memorandum of Counsel for the Defendant Regarding Costs and Calculation of Interest”. The memorandum was filed in response to the plaintiff’s application for judgment in the sum of \$28,482.92. In his memorandum, Mr France raised two issues which he submitted were relevant to the determination of the final award. He described them as:

- 4.1 Outstanding wages and holiday pay owed by the Plaintiff and yet to be paid to the Defendant; and
- 4.2 The ability of the Defendant to pay and prospect of repayment of the Plaintiff’s monies owed pursuant to the final award.

[5] In relation to the wages and holiday pay claim, Mr France advised that before the Employment Relations Authority hearing the plaintiff’s human resources manager had recognised that the plaintiff owed the defendant outstanding wages and holiday pay in the sum of \$8,166.62. Mr France claimed that, given that concession, the sum of \$8,166.62 should be offset against the figure of \$24,639.20 reducing the award to \$16,742.58 with a recalculated interest payment of \$2,569.72 resulting in a total award of \$19,042.30.

[6] In response to this submission, Mr Harrison filed a memorandum on 19 May 2011 submitting:

2. With respect to counsel’s argument that the Court’s judgment awarding the Plaintiff damages in the amount of \$24,639.20 should be offset by outstanding wages and holiday pay owed to the Defendant, the Plaintiff respectfully submits that the Defendant did not file any cross-appeal with respect to her claims for wages and holiday pay, and therefore, any amounts owed to the Defendant in this regard have no bearing on the Court’s judgment here.

3. The Plaintiff does not dispute that the Defendant has a claim for outstanding wages and holiday pay and that such a claim will become relevant when the Plaintiff attempts to collect on the judgment in this case.
4. In the meantime, however, the Plaintiff is entitled to a sealed judgment with respect to the damages and interest owed in the amount of \$28,482.92.

[7] I agree with Mr Harrison's submissions. The issue of wages and holiday pay was not part of the challenge in this Court and it was not the subject of evidence or submissions before me. The plaintiff is entitled to a sealed judgment in the amount of \$28,482.92 and I so order.

[8] In relation to the other issue raised by Mr France regarding the defendant's ability to pay the amount of the final award, in my view, it is premature for the Court to embark on any inquiry at this stage as to the defendant's financial position. The position can be reviewed, if necessary, following any enforcement steps initiated by the plaintiff.

A D Ford

Judge

Judgment signed at 9.30 am on 25 May 2011