



DECISION

Fair Work Act 2009
s.120—Redundancy pay

Mason Architectural Joinery Pty Ltd (C2020/938)

COMMISSIONER MCKINNON

MELBOURNE, 9 APRIL 2020

Application to vary redundancy pay for incapacity to pay.

[1] Mason Architectural Joinery Pty Ltd is a small business employer in financial difficulty. Over recent months it has taken a number of steps to reduce its overheads, including reduced spending, sale of a company car and the redundancy of two employees including Mitchell Grant.

[2] Mr Grant was employed by Mason Joinery for three years and one day, from 6 February 2017 until 6 February 2020. The *Joinery and Building Trades Award 2010* applied to his employment and his weekly pay was \$988.00 for 38 hours work. When his role was made redundant, he became entitled to 3 weeks' notice of termination as well as 7 weeks' redundancy pay. His entitlement to notice of termination has been paid but his entitlement to redundancy pay has not. Mr Grant has also been paid accrued annual leave (115.69 hours) and accrued rostered days off (67.61 hours) since the termination of his employment.

[3] Mason Joinery has asked for an order varying its redundancy pay obligation to Mr Grant because it cannot afford to pay. I have discretion to reduce the amount of redundancy pay (including to nil) under the Act if I consider it appropriate to do so.

[4] After the termination of his employment, Mr Grant had 8 days off work before starting another job on 12 February 2020. He took leave for a pre-booked holiday to Bali from 15 March 2020 to 21 March 2020. On his return, was required to self-isolate for 14 days in connection with the COVID-19 pandemic. He resumed work on 6 April 2020. He is paid \$2 per hour more in his new job than he was paid by Mason Joinery.

[5] At the time of the hearing, the situation for Mason Joinery had improved slightly. After having received no business income for two months, it had received one payment for a completed job and was hopeful of two new contracts coming through. It was still finishing pre-booked jobs although two had been lost due to the pandemic. The business is trying to work through the current crisis and much depends on how long the situation lasts.

[6] I am satisfied that Mason Joinery is under significant financial strain and that it cannot afford to pay Mr Grant's full entitlement to redundancy pay.

[7] On my calculation, Mr Grant was out of work and unpaid for 8 days due to the redundancy of his position. The notice of termination he received was equivalent to 15 days' pay, which was sufficient to cover this period. The amount paid for rostered days off was payment for time already worked and is a neutral consideration. The holiday to Bali was booked at the time Mr Grant was still employed by Mason Joinery. No loss accrues to Mr Grant in relation to the holiday because he was paid his accrued annual leave entitlements following the termination of his employment. That payment was sufficient to cover both the holiday and the period of self-isolation. There is no evidence that Mr Grant was unwell during the period.

[8] Taking these circumstances into account, I consider it appropriate to reduce the amount of redundancy pay to which Mr Grant is entitled to 1 weeks' pay.

[9] A determination to this effect will be issued separately.



COMMISSIONER

Appearances:

J Bye for the applicant

M Grant for the respondent

Hearing details:

2020.

Melbourne (telephone hearing):

April 6.

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