



system as annual leave and had not been communicated by Ms Arnold at the time as bereavement leave.

[4] Mr Ian Duxfield, principal of Property West Ltd, in his letter of 2 March 2009, advised that if Ms Arnold was entitled to the funeral attendance time as annual leave then the records would be changed. He also noted that she had not worked out one weeks' notice when she resigned and that she still owed the company \$2,920 in unpaid expenses.

[5] Mr Duxfield in his response further noted that the Labour Inspector had rejected Ms Arnold's claim and because of that the matter was thought to have been brought to an end. The company sought to have the problem resolved quickly.

[6] On 23 March 2009, a short time after Mr Duxfield wrote his letter, Property West Ltd was put into liquidation. Ms Arnold has however been permitted by the liquidator from the firm McDonald Vague to proceed with her claim. She has also been advised of the liquidator's expectation that there will be insufficient funds available for unsecured creditors after payment has been made to preferential creditors. The liquidator has noted that an employee's claim for wages, holiday pay and redundancy, up to a maximum of \$16,420 has preference in any payout, under the 7th Schedule of the Companies Act 1993.

[7] The liquidator and Mr Duxfield were served by the Authority with notice of its investigation meeting. There was no appearance on behalf of the company in liquidation at the meeting, which proceeded in accordance with the advice given in the notice that the Authority may issue a determination in favour of an applicant without hearing evidence from a respondent, should the latter party fail to attend the meeting.

[8] I am satisfied from interviewing Ms Arnold that she was employed by Property West Ltd for approximately 18 months between November 2006 and April 2008. Her remuneration was \$40,000 per annum plus \$250 commission on each sale achieved by members of the team she managed.

[9] Ms Arnold was paid weekly with PAYE deducted.

[10] Ms Arnold says that she took in total five days annual leave during her employment. She denies that she took annual leave during a conference she attended

overseas, as this was for work purposes and in work time. Her absence for a funeral was also taken as bereavement leave. As to the claim that she worked only four days each week Monday to Friday, she says she normally worked both days of the weekend and that Wednesday was her one day off.

### **Determination**

[11] I am satisfied, and no evidence has been presented to contest or contradict it, that Ms Arnold's statement is correct and that she is owed holiday pay for five weeks.

[12] I calculate the amount as being \$3,846.00.

[13] Accordingly, the Authority orders Property West Ltd (in liquidation) to pay to Ms Arnold \$3,846.00 as holiday pay due under her employment agreement with the company and under the Holidays Act 2003.

A Dumbleton

**Member of the Employment Relations Authority**