

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Lynn Booker, Labour Inspector (Applicant)

AND Lifestyle Decorators Limited, a registered company having its registered office at 12A Solana Court, Howick, Auckland (Respondent)

REPRESENTATIVES Kris Metcalf, Labour Inspector for Applicant
No appearance for Respondent

MEMBER OF AUTHORITY Robin Arthur

INVESTIGATION MEETING 21 September 2006

DATE OF DETERMINATION 22 September 2006

DETERMINATION OF THE AUTHORITY

[1] The applicant Labour Inspector seeks an order requiring the respondent company to pay outstanding annual holiday pay to a former employee, Matthew Jenkins. She also seeks interest on that amount, a penalty for failure to pay and her filing.

[2] The respondent did not file a statement in reply to the Inspector's application. I am satisfied that copies of the statement of problem were sent to the address of the registered office of the respondent and the address for communication given in its 2006 annual report filed with the Companies Office in April this year. Courier tracing records confirm this correspondence was delivered and signed for at both addresses.

[3] Similarly I am satisfied that notices of the investigation meeting was sent to the respondent's registered office and its address for communication. Courier tracing records show these were delivered and signed for at both addresses.

[4] Mrs Booker was ill on the morning of the investigation meeting. Mr Metcalf, also a Labour Inspector, attended as her representative at short notice. There was no attendance on behalf of the respondent. I waited for 15 minutes and continued with the meeting.

[5] I am satisfied from the unchallenged information filed by Mrs Booker with her application that her inquiries established Mr Jenkins was entitled to a payment of \$784.80 gross in outstanding holiday pay at the end of four months of employment as a painter with the respondent. From time and wage records provided by the respondent, the inspector calculated Mr Jenkins entitlement. She gave the respondent the opportunity to comment on her calculation and provide any further relevant information. She spoke with company director Tony Whakatau on at least three occasions. On 29 May 2006 he promised to make the payment to her but, despite two further promises to do so, has not. He did not return further messages left by the Inspector.

Determination and orders

[6] In these circumstances I am satisfied that the following orders should be made under the Holidays Act 2003 and the Employment Relations Act 2000. Within 28 days of this determination, the respondent is to pay:

(i) to the Labour Inspector, for the benefit of Mathew Jenkins, the sum of \$784.80 gross in outstanding holiday pay; and

(ii) to the Labour Inspector, for the benefit of Mathew Jenkins, interest on this sum, at the annual rate of 8 per cent, being the additional sums of \$19.55 (being interest for the 115 days from 29 May 2006 to the date of the investigation meeting, calculated at 17 cents a day), and a further 17 cents a day from the date of this determination until the day that payment is made; and

(iii) to the Employment Relations Authority, for credit to the Crown account, a penalty of \$500 under section 75 of the Holidays Act 2003 for failing to pay Mr Jenkins his annual holiday entitlements; and

(iv) to the Labour Inspector, a further \$70 in reimbursement of her filing fee in this matter.

Robin Arthur

Member of the Employment Relations Authority