

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 374/07
5080594

BETWEEN James Arthur Denyer, Labour
Inspector

AND Les Griffen Ltd

Member of Authority: Janet Scott

Representatives: James Denyer in person for applicant
No appearance for respondent

Investigation Meeting: 28 November in Auckland

Determination: 29 November 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Labour Inspector seeks to recover for the use of Rosemary Davison outstanding holiday pay, sick leave and payment for alternative days. The Labour Inspector seeks:

- \$121.50 gross holiday pay for the use of Rosemary Davison.
- \$225.00 gross sick pay for the use of the above employee.
- \$562.50 gross for alternative days for the use of the above employee.

[2] The Labour Inspector also seeks costs in the matter, being the filing fee of \$70.00.

Note: There was no appearance for or on behalf of the respondent. I am satisfied that the respondent was served with the Statement of Problem and with the Notice of Investigation meeting. Prior to commencing the hearing I had the Support Officer contact the respondent to ascertain whether or not the respondent would be appearing. The Authority member was advised that Mr Griffen was in Rotorua and would be returning later that day. As I am satisfied the respondent has been given the opportunity to defend the matter before me and that he has been advised of the consequences of a failure to attend the hearing I have proceeded to hear and determine the matter in accordance with the provisions of Clause 12 of the Second Schedule to the Act.

Background

[3] The Labour Inspector brings the claim for Rosemary Davison, a former employee of the respondent who owns and operates a Guthrie Bowen Store in Henderson.

[4] The Labour Inspector advises that he requested wage and time records from the employer. Records were provided but they were simply a record of weekly hours worked and wages paid. They did not record the days worked by the employee, sick days taken or public holidays worked.

[5] The records provided show that the worker commenced employment with the respondent in the week ending 29 January 2006. Her last day of employment was apparently 23 February 2007. She worked 3 days per week (Monday, Wednesday and Friday) and was paid \$15.00 per hour.

Discussion

[6] In his letter to the Labour Inspector setting out the record of weekly hours and wages paid Mr Griffen criticised the employee's attendance record and her conduct. He also noted she had not been paid sick pay on two days because no prior indication had been given that she was sick.

[7] I note that the Labour Inspector made strenuous efforts to engage the respondent and to have him provide the information necessary to balance information provided to him by the worker. Further, after the Labour Inspector calculated the sums owed in reliance on the information provided by the worker the Labour Inspector put the calculations to the respondent for his comments – to no avail. The Authority, too, has taken every step possible to encourage the respondent to address the claims brought by the worker.

[8] However, given the respondent's failure to engage to resolve the claims made by the worker, the Labour Inspector and the Authority have, in bringing finality to the matter, had to rely solely on the information provided by worker.

Holiday Pay

[8] The worker was paid 9 days holiday pay on or about 11 February 2007. However, the Labour Inspector advises that holiday pay paid has not been calculated in accordance with the Act. In particular, Ms Davison is entitled to payment for sick days taken and for work done on public holidays. The non payment for these days has affected the worker's final holiday pay calculation.

[9] I am satisfied the Labour Inspector has correctly calculated holiday pay owing to the worker.

Sick Pay

[10] The Labour Inspector has claimed 2 days sick pay for the worker in respect of sick days taken by her in the weeks ending 14 August 2006 and 21 January 2007.

[11] The applicant was entitled to pay for the days in question and the fact that she gave late notice of absence due to sickness does not disentitle her to payment for those days.

[12] I am satisfied the Labour Inspector has correctly calculated the sick pay owed to the worker.

Public Holidays

[13] The worker has advised the Labour Inspector that she worked 5 public holidays over the period of her employment being Auckland Anniversary Day 2006 (January 30), Waitangi Day 2006 (February 6), Queens Birthday 2006 (June 5) Labour Day 2006 (23 October) and Auckland Anniversary Day 2007 (29 January). The worker did not receive payment for time worked those days at T11/2¹. Neither did she receive the paid alternate day as required under the Holidays Act 2003.

[14] The Labour Inspector only claims payment for the alternate holiday that the worker is entitled to.

[15] I am satisfied that the Labour Inspector has correctly calculated the alternate days pay owing to the worker.

Determination

[16] I find the claimed sums are owed to the worker and direct the respondent to pay to the Labour Inspector the following sums:

- \$121.50 gross as arrears of holiday pay owing.
- \$225.00 gross as sick pay owing to the worker.
- \$562.50 gross for alternative days pay owing to the worker.

¹ She was paid T1.

Costs

[17] The respondent is also directed to pay to the Labour Inspector the sum of \$70.00 net to reimburse him for the cost in filing this matter in the Authority.

Janet Scott

Member of the Employment Authority