

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

5078965  
AA 231/07

BETWEEN                      JAMES ARTHUR DENYER,  
   LABOUR INSPECTOR  
   Applicant

AND                                VITALITY JUICE BAR  
   LIMITED  
   Respondent

Member of Authority:        Marija Urlich

Representatives:             James Denyer, in person  
   No appearance by the respondent

Investigation Meeting:      2 August 2007

Determination:                2 August 2007

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Labour Inspector Denyer brings a minimum wage and holiday pay claim on behalf of Hea Park and Shanshan Jiang, former employees of Vitality Juice Bar Limited. Mr Denyer has provided a comprehensive report calculating the outstanding wage and holiday pay entitlement and recording the steps taken to calculate and recover those sums. He seeks the following orders from the Authority:

- (i) That Vitality Juice Bar Limited pay outstanding holiday pay of \$138.00 (gross) for Hea Park;
- (ii) That Vitality Juice Bar Limited pay unpaid wages of \$635.50 (gross) for Hea Park;
- (iii) That Vitality Juice Bar Limited pay outstanding holiday pay of \$120.00 (gross) for Shanshan Jiang;
- (iv) That Vitality Juice Bar Limited pay unpaid wages of \$686.75 (gross) for Shanshan Jiang;

- (v) penalties for failure to provide holiday records and failure to provide wage and time records; and
- (vi) recovery of the filing fee.

[2] By order of the Authority the statement of problem and notice of investigation meeting were to be personally served on Emil Pama, the director and shareholder of Vitality Juice Bar Limited, at the address for service of the respondent company. I am satisfied that service, as directed by the Authority, was effected on 18 July 2007.

[3] Vitality Juice Bar Limited did not file a statement in reply and did not make an appearance at today's investigation meeting. Shortly after the scheduled start time an Authority Support Officer telephoned Mr Pama on a number provided by the Labour Inspector, left a message regarding the investigation meeting and asked him to return her call urgently. At 10.30am neither Mr Pama nor any other representative of the company had contacted the Authority. I proceeded with the investigation of this employment relationship problem satisfied that the respondent had a fair opportunity to attend the scheduled meeting.

#### Determination

[4] Hea Park and Shanshan Jiang were employed by the respondent to operate its juice bar. They ended their employment because they were paid erratically. They did not receive holiday pay or outstanding wages on termination and referred their employment relationship problem to the Labour Inspectorate.

[5] In the absence of records from the respondent Mr Denyer has calculated the claim on the best information available to him; that provided by Hea Park and Shanshan Jiang.

[6] Having considered the evidence received, that is Mr Denyer's comprehensive investigation report, and his evidence to the Authority today, I make the following orders:

- (i) **Vitality Juice Bar Limited is to pay outstanding holiday pay of \$138.00 (gross) for Hea Park;**
- (ii) **Vitality Juice Bar Limited pay unpaid wages of \$635.50 (gross) for Hea Park;**
- (iii) **Vitality Juice Bar Limited pay outstanding holiday pay of \$120.00 (gross) for Shanshan Jiang;**
- (iv) **Vitality Juice Bar Limited pay unpaid wages of \$686.75 (gross) for Shanshan Jiang;**
- (v) **Vitality Juice Bar Limited is to reimburse the Labour Inspectorate \$70, being the filing fee incurred in lodging this application.**

[7] Penalties are sought against the respondent. It is appropriate that penalties are awarded. I am satisfied that the Labour Inspector repeatedly requested that wage, time and holiday records be produced, that those requests were communicated to Vitality Juice Bar and that the requested records were not provided. The respondent did not appear and offer any explanation. The respondent is to pay the penalty into the Authority which will then pay that sum into the Crown bank account.

[8] **Vitality Juice Bar Limited is ordered to pay total penalties of \$2000 pursuant to section 75(2)(e) Holidays Act 2003 and Employment Relations Act 2000 section 229(3) & (7).**

Marija Urlich

Member of the Employment Relations Authority