

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2011] NZERA Wellington 1

File Number: 5304506

BETWEEN Jamie Goodwin
 Applicant

AND Steve Quinn and Kapiti Coast
 Holdings Limited
 Respondents

Member of Authority: Denis Asher

Representatives: Joe Richardson for Mr Goodwin
 No appearance by or for the respondents

Investigation Meeting Wellington, 6 January 2011

Submissions Received Day of the investigation

Determination: 6 January 2011

DETERMINATION OF THE AUTHORITY

The Problem

[1] Is Mr Goodwin owed unpaid holiday pay by the respondents? If he is, should interest on this unpaid money be ordered, as well as a penalty and costs?

[2] No statement in reply has been provided by the respondents.

[3] Notwithstanding a direction given during a telephone conference on 1 October 2010 to do so, the parties have not undertaken mediation in respect of this

employment relationship problem entirely, I understand, because of the respondents' lack of responsiveness to overtures to do so by Mr Goodwin.

The Investigation

[4] As explained above, there was a telephone conference call on 1 October 2010. Mr Steve Quinn represented himself and his company, Kapiti Coast Holdings Limited. He is its sole director. During the call I also directed this matter to an investigation on Thursday 6 January 2010 in the event it was not resolved beforehand by the parties on their own terms.

[5] Mr Quinn did not present at today's investigation. No explanation was provided by him in advance. At the outset of today's investigation I left a telephone message on his portable telephone: Mr Quinn telephoned me back shortly afterward. He said he had been unable to contact the Authority as he did not have its telephone number and was ill in bed. I did not accept this explanation as Mr Quinn has previously received extensive correspondence from the Authority (including a signed for notice of today's investigation) which included contact details, amongst other information; no medical certificate was proffered in respect of the alleged illness.

Good Faith

[6] Mr Quinn was unable to offer any explanation for his failure to undertake mediation despite the direction given him during the 1 October 2010 conference call and subsequent, also receipted written notice of the same date. Mr Quinn's conduct raises doubt as to his good faith per s. 181 of the Employment Relations Act 2000 (the Act).

Background

[7] During the telephone conference on 1 October 2010 I did not understand Mr Quinn to dispute the following as set out in Mr Goodwin's statement of problem:

[8] Mr Goodwin commenced employment with the respondents on 20 April 2009.

[9] In breach of the Act Mr Goodwin was not provided with a written employment agreement. Nor was he provided with pay slips.

[10] The employment relationship terminated by mutual agreement on 22 February 2010 (misstated as 2 February in the SoP).

[11] The parties agreed at the time that Mr Goodwin would not dispute the termination of his employment if he was paid his holiday pay: the applicant has not been paid that money.

[12] A number of efforts by Mr Goodwin and his advocate, Mr Joe Richardson, to recover his holiday pay have proven unsuccessful.

[13] During my telephone discussion today with Mr Quinn he said by way of explanation for failing to pay the holiday pay that the applicant owed him the cost of a replacement uniform and was responsible for “*stuff missing from the truck*”. He said the applicant was responsible for costs he estimated as totalling \$1,000. Mr Quinn was unable to explain why these claims had not been advanced earlier, in replies to correspondence from Mr Richardson on Mr Goodwin’s behalf, or in a statement in reply or in a mediation context. He did not account for the failure to pay the balance of the holiday pay claimed by the applicant and not contested by him, i.e. \$1,500.

Discussion and Findings

Holiday Pay Claim

[14] I am satisfied from the evidence before the Authority, in particular the respondents’ acknowledgement of the claim, that Mr Goodwin is owed unpaid holiday pay totalling \$2,500. I direct that he be paid those monies.

Interest Claim

[15] Because of that acknowledgement and the respondents’ repeated failures to pay the holiday pay to Mr Goodwin I am satisfied that the applicant should receive interest on the unpaid money.

Penalty

[16] A penalty is claimed against the respondents for breaches of the Act and the Holidays Act 2003.

[17] In *Xu v McIntosh* [2004] 2 ERNZ 448, 451 the Employment Court found that:

In determining the quantum of penalties to be imposed for the breaches of the ERA ... the first question to ask was, how much harm had the breach occasioned? Further, how important was it to bring home to the party in default that such behaviour was unacceptable, or to deter others from it? The next question ... was: was the breach technical or inadvertent, or was it flagrant and deliberate?

[18] The importance of adhering to legislative obligations is fundamental if not self-evident to parties' good faith obligations in the context of an employment relationship.

[19] The respondents' breaching of its obligation to pay holiday pay to Mr Goodwin has been both sustained and deliberate.

[20] Significant harm has been occasioned Mr Goodwin by the non-payment of the monies owed to him, and the effort he has been put to to recover the same. This harm will not be fully put right by paying him, with interest, the monies he is owed. A penalty would bring home to Mr Quinn that his behaviour was unacceptable. It will clearly deter others also. The breaches are not technical or inadvertent, but were plainly deliberate and prolonged. On balance, and by way of applying *Xu* (above), I am satisfied a penalty of \$1,000 is appropriate and that it should be paid in full to the applicant: s 136 (2) of the Act applied.

[21] I also place Mr Quinn on notice, should he fail to meet the requirements of this determination, of the powers of the Employment Court to deal with default by way of fines not exceeding \$40,000.00, imprisoning a person in default for up to 3-months and/or sequestering their property.

[22] The respondents are able to pursue any claims for monies allegedly owed them by the applicant either by way of fresh proceedings in the Authority or in the Disputes Tribunal.

Determination

[23] The respondents are to jointly and severally pay Mr Goodwin the following amounts:

- a. Unpaid holiday pay of \$2,500.00 (two thousand and five hundred dollars); and
- b. Bearing in mind the present Reserve Bank 90-day bill rate, the respondents are to pay Mr Goodwin interest of 5% on unpaid holiday pay from the date of this determination until the amount is paid in full. Leave is reserved for the parties to refer the calculation back to the Authority if agreement on the same is not forthcoming; and
- c. The respondents are also to pay to Mr Goodwin the penalty awarded against them of \$1,000 (one thousand dollars).

[24] Costs were reserved at the end of today's less than half a day investigation. However, subject to the parties' submissions, I can indicate the following. The Authority's discretion with which to award costs is now well settled and typically follows the event: *PBO Limited (formerly Rush Security Limited) v Da Cruz* [2005] 1 ERNZ 808. Considerable effort has been expended on Mr Goodwin's behalf by Mr Richardson in preparing for today's investigation – preparation made more difficult by Mr Quinns' abundant failure to participate in this process. The respondents should therefore expect to contribute to the applicant's fair and reasonable costs by way of paying \$1,500.00 (fifteen hundred dollars).

Denis Asher

Member of the Employment Relations Authority