

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI A TARA ROHE**

[2025] NZERA 557
3271399

BETWEEN

DINO GOVERNOR
Applicant

AND

DANIEL RIDDIFORD
Respondent

Member of Authority: Shane Kinley

Representatives: Jills Angus Burney, counsel for the applicant
Respondent in person

Investigation Meeting: 11 June 2025 in Masterton

Submissions and further information: Up to 2 September 2025

Determination: 9 September 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Dino Governor was employed by Daniel Riddiford to work at Te Awaiti Station, a farm property operated by Mr Riddiford. Mr Governor's initial period of employment was from September 2020 and ended in contested circumstances in March 2021. Mr Governor raised claims of wages arrears, breaches of his employment agreement, record-keeping issues and breaches of the duty of good faith owed to him under s 4 of the Employment Relations Act 2000 (the Act). Mr Governor also sought interest on arrears, penalties for breaches of statutory requirements and penalties for breaches of the terms of wage subsidy agreements Mr Riddiford entered with Work and Income New Zealand (WINZ).

[2] Mr Riddiford denies Mr Governor's claims and says no amounts are outstanding to Mr Governor.

The Authority's investigation

[3] This matter was initially considered by another Member of the Authority, who held case management conferences and issued Directions in September 2024 and January 2025. Under cl 16 of sch 2 of the Act I assumed responsibility for investigating this matter. I held two case management conferences on 28 April 2025 and 9 May 2025, and issued Directions on 28 April 2025 and 12 May 2025.

[4] As a preliminary point, I considered during the conference on 28 April 2025 the issue of who the correct respondent was, as three different parties had been named as the respondent or respondents by that time, being Te Awaiti Station, Mr Riddiford and Te Awaiti Partnership Limited (the Partnership). The Partnership had sought the dismissal of proceedings against it on the basis it had been incorrectly named as it did not exist when the events being investigated for this matter were contended to have occurred. As Companies Office records were clear the Partnership was incorporated on 23 April 2024, some years after the events being investigated occurred, I directed the Partnership be removed as a respondent and the matter proceed with Te Awaiti Station and Mr Riddiford as the named respondents. I also indicated the investigation of this matter would need to determine who Mr Governor was employed by, given the lack of certainty over the legal status of Te Awaiti Station.¹

[5] At the investigation meeting on 11 June 2025 Mr Riddiford conceded that he had been Mr Governor's employer. I have proceeded based on Mr Riddiford's acknowledgement, with the consequence he is now the only named respondent and the issues to be investigated and determined, as listed in paragraph [11] below, do not include who Mr Governor was employed by.

[6] For the Authority's investigation a written witness statement was lodged by Mr Governor with supporting documents. On 8 June 2025 Mr Riddiford lodged several documents with the Authority, copied to Mr Governor's counsel, which started with the title "Submissions" and included a "Notice seeking further and better particulars" and a Statement of Problem. Mr Riddiford also provided documents, including bank records showing payments made to Mr Governor. I have treated the documents provided by Mr Riddiford as his evidence in this matter.

¹ An amended Statement of problem lodged on Mr Governor's behalf which include the Partnership, Mr Riddiford and a third party as respondents was withdrawn at the conference on 28 April 2025. I have not considered the amended Statement of problem further.

[7] Mr Riddiford's documents included a Statement of problem, which I consider to be a counterclaim, seeking damages from Mr Governor for alleged damage to a tractor. As this counterclaim was lodged within days of the scheduled investigation meeting, I directed the Authority Officer to advise that if Mr Riddiford wished his counterclaim to be progressed by the Authority, then it would need to be lodged as a stand-alone matter and the applicable filing fee paid, with Mr Governor then to be provided an opportunity to lodge a statement in reply. At the investigation meeting I reiterated the Statement of problem Mr Riddiford had lodged would need to proceed as a stand-alone claim, following payment of a filing fee. Mr Riddiford has not done so and the counterclaim is not considered further in this determination, except as noted in paragraphs [105] and [107] below.

[8] Mr Governor and Mr Riddiford attended the investigation meeting and answered questions, under affirmation and oath respectively, from me and from the representatives.

[9] At the conclusion of the investigation meeting, I timetabled for submissions and evidence discussed during the investigation meeting to be provided. I also indicated a preliminary view at the investigation meeting, discussed further at paragraph [26] below, in relation to Mr Riddiford's compliance with wage and time records requirements under s 130 of the Act. Following the investigation meeting, the Authority Officer on my direction, advised the representatives of points I considered it would be helpful for submissions to address. Following the investigation meeting the representatives provided written submissions and further information in accordance with timetable directions made at the conclusion of the investigation meeting and agreed extensions to those timetable directions. In addition, clarification was sought of the status of an ACC review which Mr Riddiford has sought, as discussed at paragraph [85] below, with responses provided up to 2 September 2025.

[10] As permitted by s 174E of the Act this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

The issues

[11] The issues requiring investigation and determination are:

- (a) Whether Mr Governor is owed any arrears of wages by Mr Riddiford?

- (b) Was Mr Governor’s employment agreement breached by Mr Riddiford?
- (c) Did Mr Riddiford breach statutory obligations to pay Mr Governor or Mr Riddiford’s duty of good faith to Mr Governor?
- (d) Should any penalties be imposed on Mr Riddiford for breaches of the Wages Protection Act 1983 (WPA) or any other statutory provisions and, if so, should any portion of penalties imposed be awarded to Mr Governor?
- (e) Should interest under the Interest on Money Claims Act 2016 (IoMCA) be ordered to be paid based on any amounts found to have been unpaid?
- (f) Should any party contribute to the costs of the other party, including filing fees?

Is Mr Governor owed any arrears of wages by Mr Riddiford?

Quantum and basis of claims, and approach to determining arrears

[12] At the investigation meeting counsel for Mr Governor indicated they intended to update the quantum and basis of Mr Governor’s arrears of wages claims to reflect evidence provided by Mr Riddiford, including bank records. I directed this be clearly set out in submissions.

[13] The claimed arrears total either \$5,167.52 gross² or \$5,690.44 gross, comprising:

- (a) 28.5 hours worked which were not paid in Mr Governor’s final pay for the period from 22 February 2021 to 9 March 2021, plus six hours sick leave within the same period – the amount claimed is \$690 gross plus 8% holiday pay of \$55.20, totalling \$745.20 gross;
- (b) Holiday pay calculated under s 23(2) of the Holidays Act 2003 (HA2003) at 8% of Mr Governor’s gross wages in the amount of \$1,519.28 gross;
- (c) Public holiday pay for seven public holidays observed which occurred during Mr Governor’s employment, calculated at \$1,110.06 gross;
- (d) Seven days unpaid during a “standdown” during the Christmas 2020 and New Years 2021 period, calculated at \$1,107.90 gross; and
- (e) First week compensation under s 97 of the Accident Compensation Act 2001 (ACA2001) after Mr Governor stopped work and made a claim for a work-

² Submissions totalled the amount claimed to \$5169.68 gross, although the basis for the difference in total is unclear. I have used the total of each claim, rather than the figure from submissions.

related personal injury, calculated at either \$685.08 gross or \$1,208 gross.³

[14] In order to determine whether Mr Governor is owed the claimed arrears, I first need to determine what the real nature of Mr Governor's employment was and then whether Mr Riddiford has complied with record keeping obligations under s 130 of the Act. This second point has consequences for how I approach the evidence about hours worked by Mr Governor.

What was the real nature of Mr Governor's employment?

The terms of Mr Governor's employment, and the WINZ wage subsidy associated with his employment

[15] Mr Governor was employed under a document headed "Casual Employment Contract". Two near identical⁴ copies of the same document were provided, which included the following terms relevant to his claims for arrears:

1 ... the Employer, due to operational and seasonal requirements, requires casual labour on an "as and when required" basis, and the Employee agrees to provide their labour on that basis ...

4 Hours of work

As determined by the Station Manager or staff to best suit the management of the farm (and without overtime or any allowances for irregular hours)

5 Remuneration

\$20 *per hour* [handwritten] inclusive of holiday pay and all allowances whatsoever

6 Accommodation

The Employer may provide accommodation, which shall be kept clean and tidy at rental of ~~\$100pw~~ [struck in pen] plus reimbursement of electricity and internet and phone. ...

[Handwritten side note] *Rental shall be agreed from time to time*

8 Method of payment

At the end of each fortnight or period the Employee will email the Employer with a list of the dates and hours and nature of work brief

³ Submissions set out two bases for calculation being 80% of Mr Governor's ordinary wages, which were said to be \$792.90 per week, plus 8% for holiday pay, or 80% of his average gross wages over the previous four weeks, which were said to be \$1,510.

⁴ The differences were in hand-written aspects, rather than the typed terms of the employment agreement, and where some handwriting and signatures were located.

detail of the work content so that his pay can be direct credited to
[handwritten reference to bank account]

No payment will be made until the Employee has first emailed all
required reports.

[Handwritten note on bottom of page]

8 No pay until a day by day, line by line, handwritten report of date,
start and finish times, less lunch and activity (eg River Country replace
foots)*

[16] Mr Governor provided copies of WINZ wage subsidy agreements associated with his employment, which had been obtained under the Official Information Act 1982 (OIA) from the Ministry of Social Development (MSD). The WINZ wage subsidy agreements between Mr Riddiford and WINZ provided for WINZ to subsidise Mr Governor's employment initially from 28 September 2020 until 14 February 2021 at the rate of \$500 per week, and then from 15 February 2021 until 15 August 2021 at the rate of \$200 per week.

[17] In terms of pay and hours of work, and type of employment, both WINZ wage subsidy agreements stated:

(B) Rate of Pay

The Employer will employ the Employee for the stated minimum hours per week, at no less than the applicable legal minimum wage. The agreed hours of work per week, the wage and the period of employment will be clearly stated in the Employer's written agreement with the Employee (with a copy held on site).

Hours per week: 30 ...

CONDITIONS OF AGREEMENT

Background

- A. [WINZ] has agreed to pay to the Employer a Flexi-Wage Subsidy ("the Subsidy") with respect to providing a [WINZ] client ("the Employee") with paid work under this Agreement.
- B. This employment will be full time (for 30 hours or more per week) or part time for people who have been assessed as having a part time work requirement. ...

The parties agree as follows:

1. [WINZ] agrees to pay the Employer the Subsidy for the period and on the conditions specified in the Agreement unless the parties both agree to a variation in writing.
2. The Employer accepts that the Conditions of Agreement apply to the Employee referred to and the agreed hours and rate of pay.
3. If the Employee is paid for less than the hours stated per week, other than for reasons of illness, accident or as agreed in the Conditions of Agreement, [WINZ] may refuse payment or make appropriate

deductions of the payment to the Employer under this Agreement for that week. ...

Submissions of the parties

[18] While Mr Governor accepts his employment agreement states he was employed on a casual basis, he said he worked 40 hours per week with hours and days to be arranged each week. At the investigation meeting he said when he worked on bee-keeping duties the hours could be as much as 13 per day. Submissions for Mr Governor said the real nature of the employment could not be casual, as Mr Riddiford bound himself under the WINZ wage subsidy agreements to employ Mr Governor under a permanent or fixed-term agreement. Mr Governor said the weight of evidence pointed to him being employed under a fixed-term agreement.

[19] Mr Riddiford says the employment was based on the signed employment agreement, “no more and no less”, and the WINZ wage subsidy agreement:

... was no more than a partial funding agreement expecting the Employer to deliver at least 30 hours of employment per week in a legally compliant form. Deliberately it did not impose any form of agreement upon [Mr Riddiford], except that it is obvious that it should be legally compliant.

[20] Mr Riddiford says there was no evidence the employment was agreed to be for a fixed-term, and consistent with *Jinkinson v Oceana Gold (NZ) Ltd*⁵ the parties had agreed to a casual agreement. Mr Riddiford says Mr Governor’s claims to have worked to a roster were “[c]ompletely speculative and untrue” before stating:

Initially, until the bee season started, I arranged hours to start at 7.30am to provide at least 30 hours for Mr Governor although, in reality, there was no such work need. However, as soon as hives needed to be stimulated and then shifted, much longer and more erratic hours were worked

[21] Mr Riddiford denies the WINZ wage subsidy agreement directed the form of agreement between him and Mr Governor, and says Parliament, through s 66 of the Act, “directed the only criterion to be what has been agreed” (emphasis in original).

Mr Governor was employed on a fixed-term basis, with hours to be arranged each week

[22] I find the real nature of Mr Governor’s employment is that he was employed on a fixed-term basis, with a guarantee of a minimum of 30 hours work each week. Notwithstanding the employment agreement stating it was casual, I consider there was

⁵ *Jinkinson v Oceana Gold (NZ) Ltd* [2009] ERNZ 225.

a sufficient pattern of work established, with Mr Riddiford's own evidence being he "arranged hours to start at 7.30am to provide at least 30 hours for Mr Governor".

[23] I consider the bank records provided by Mr Riddiford also support the regularity of work, as they show from September 2020 until February 2021 there were payments for at least 60 hours per fortnight, with two exceptions. The first was for the period from 14 to 22 December 2020, where there was a payment for 56.5 hours, although this period is less than a full fortnight. The second was for the Christmas 2020 and New Years 2021 period, where there was no payment at all again until the period from 4 to 17 January 2021. The most hours which appear to have been worked in a fortnight were 105.5 between 30 November and 13 December 2020, which would support Mr Governor and Mr Riddiford's evidence that a higher number of hours would be worked when this was required eg for beekeeping duties. I consider this evidence is analogous to the situation in *Jinkinson* where the Court found:⁶

Throughout the 19-month period, Ms Jinkinson worked extensively and consistently. Except when on leave, Ms Jinkinson worked every week and averaged more than 45 hours' work per week. She was allocated shifts through a roster. The pattern of her work was consistent and highly predictable.

On the basis of these factors, Ms Jinkinson was **entitled to have a legitimate expectation of continuing employment** after they had obtained for a reasonable period. That created a corresponding obligation on Oceana Gold to provide her with work on an ongoing basis. I find that **this obligation arose within a matter of months** and certainly well before the end of the 19-month period during which Ms Jinkinson was employed. (emphasis added)

[24] A letter from Mr Riddiford to Mr Governor recording payments for the period from 21 September to 2 October 2020 also provided a clear indication of Mr Riddiford's intention the employment be a fixed-term arrangement, where it stated:

As we have discussed I cannot guarantee long term work because of the present economic problems for farming beyond the 20 week period of the [WINZ] assistance.

[25] I am satisfied Mr Governor had a legitimate expectation of ongoing employment for a minimum of 30 hours work each week, for at least the fixed-term duration of the WINZ wage subsidy period. This expectation was established very early in the employment relationship both by Mr Riddiford's words, in the letter quoted at paragraph [24] above, and through his conduct, in rostering and paying Mr Governor on the basis of a minimum of 30 hours per week, with two exceptions only as identified in paragraph [23] above.

⁶ Ibid at [63] and [64].

Has Mr Riddiford complied with record keeping obligations?

[26] At the investigation meeting I verbally advised my preliminary view that Mr Riddiford had not demonstrated having fully complied with the requirements for keeping wage and time records under s 130 of the Act, specifically the requirement under s 130(1)(g) to keep a record showing “the number of hours worked each day in a pay period and the pay for those hours”. This preliminary view was communicated to the representatives in writing the next day, by the Authority Officer, in conjunction with my Directions as to the provision of additional information and matters to address in submissions.

Submissions of the parties

[27] Mr Governor accepts the bank records provided by Mr Riddiford are helpful but say they fall “well short as an accurate or reliable source, as these records are not Wage and Time records and are incomplete”. While accepting compliance with aspects of what is required under s 130 of the Act, including name, date of payment, period of payment, gross wages, tax deductions and actual payments made, Mr Governor says the records do not show evidence of holiday pay being paid or hours of work as required under s 130(1)(g) of the Act.

[28] Mr Riddiford says the bank records provided Mr Governor with access to all information required by s 130 of the Act, although concedes in submissions that “historical archival 130(g) hardcopy records cannot be found” (emphasis in original). He says however the “lack of historical records from five years ago is not relevant”.

Mr Riddiford has not complied with record keeping obligations under s 130(g) of the Act

[29] I find Mr Riddiford has not fully complied with the requirements for keeping wage and time records under s 130 of the Act, specifically the requirement under s 130(1)(g) to keep a record showing “the number of hours worked each day in a pay period and the pay for those hours”. He has conceded hardcopy records of hours worked are not available.

[30] At the investigation meeting Mr Riddiford said he had received records from Mr Governor of hours worked and he cross-checked those, then paid Mr Governor based on the hours advised as having been worked. He freely acknowledged he had not kept the records as he saw “no reason to hold onto them” as the bank records were

enough. He also said if there was “anything of concern, I would make a point of writing a letter and giving it to [Mr Governor] in person”. A number of these letters were provided in evidence, but these do not amount to complete wage and time records as they do not record hours worked each day.

[31] The consequences of complete wage and time records not being produced are specified under s 132 of the Act, which states:

132 Failure to keep or produce records

- (1) Where any claim is brought before the Authority under section 131 to recover wages or other money payable to an employee, the employee may call evidence to show that—
 - (a) the defendant employer failed to keep or produce a wages and time record in respect of that employee as required by this Act; and
 - (b) that failure prejudiced the employee’s ability to bring an accurate claim under section 131.
- (2) Where evidence of the type referred to in subsection (1) is given, the Authority may, unless the defendant proves that those claims are incorrect, accept as proved all claims made by the employee in respect of—
 - (a) the wages actually paid to the employee;
 - (b) the hours, days, and time worked by the employee.

[32] I am satisfied the failure of Mr Riddiford to keep or produce complete records prejudiced Mr Governor’s ability to bring an accurate claim for arrears under s 131 of the Act. As a consequence, under s 132(2) of the Act I accept Mr Governor’s records where Mr Riddiford has not proved those claims to be incorrect, as identified in paragraphs [37] to [52] below.

Hours worked not paid and sick leave

Submissions of the parties

[33] Submissions for Mr Governor claimed Mr Riddiford conceded at the investigation meeting he had not paid out final wages due to Mr Governor. This appears to be based on Mr Riddiford’s answers to questions based on bank records which show after a payment was made for wages for the period 6 to 13 February 2021 on 13 or 14 February 2021, there was:

- (a) no payment for the week commencing 22 February 2021;
- (b) a payment on 3 March 2021 of \$1,139 net, which Mr Riddiford said (at the investigation meeting) was for the week commencing 1 March 2021; and

(c) no payments subsequently.⁷

[34] Mr Governor says he worked the following hours and dates, but has not been fully paid:

- (a) Monday 22 February 2021 – 8 hours worked
- (b) Tuesday 23 February 2021 – 8 hours worked
- (c) Wednesday 24 February 2021 – 8 hours worked (day of accident)
- (d) Thursday 25 February 2021 – 8 hours worked (light duties)
- (e) Friday 26 February 2021 – 8 hours worked (light duties)
- (f) Monday 1 March 2021 – 8 hours worked (light duties)
- (g) Tuesday 2 March 2021 – 6 hours worked (light duties)
- (h) Wednesday 3 March 2021 – 4.5 hours worked (light duties)
- (i) Thursday 4 and Friday 5 March 2021 – off work, zero hours claimed
- (j) Monday 8 March 2021 – 5 hours worked; and
- (k) Tuesday 9 March 2021 – 5 hours worked.

[35] Mr Governor claims he is owed 28.5 hours worked which were not paid for the period from 22 February 2021 to 9 March 2021, plus six hours sick leave within the same period. The total hours claimed match the hours Mr Governor says he worked from 1 March to 9 March 2021, plus six hours of sick leave for 8 and 9 March 2021. One of the things he claimed to have done during this period was mowing lawns.

[36] Mr Riddiford submitted that Mr Governor’s employment “finished at the end of the day of the accident in February” ie 24 February 2021. He said sick leave was not available as Mr Governor had not worked for long enough to be eligible. He further said Mr Governor had “received no work instructions from me as his Employer” (emphasis in original) after the accident and did not accept Mr Governor’s evidence at the investigation meeting that he had been mowing lawns after the accident, or that this would amount to work.

Discussion

[37] I have carefully considered whether I should accept Mr Governor’s claims to arrears under s 131 of the Act for hours worked but unpaid on the basis of his evidence

⁷ Bank records showed further payments being made in November 2021, which were for unrelated work and are not relevant for this determination.

that he worked the hours claimed from 1 to 9 March 2021. The rationale that I should do so is based on Mr Riddiford's failures to:

- (a) produce wage and time records showing hours worked by Mr Governor, as required under s 130(1)(g) of the Act, if I accept this prejudiced Mr Governor's ability to bring an accurate claim supported by wage and time records, under s 132(1) of the Act; and
- (b) prove Mr Governor's claims as to hours worked and wages paid for the period from 1 to 9 March 2021 are incorrect, as provided for under s 132(2) of the Act.

[38] While Mr Governor was paid wages on 3 March 2021 of \$1,139 net, which Mr Riddiford said was for the week commencing 1 March 2021, the bank records for this payment did not follow Mr Riddiford's usual practice of recording dates, gross payment and tax deducted. I consider it likely this payment was for 67 hours worked, based on its similarity to an earlier payment for 67.5 hours for the period from 18 to 31 January 2021. Given the absence of any payment between 14 February 2021 and 3 March 2021, I consider it more likely than not this payment was for hours worked from 15 to 24 February 2021, being the date of Mr Governor's accident. This period would likely have included eight working days, averaging 8.375 hours per day, which is consistent with Mr Governor's range of hours worked each day and week.

[39] I consider this is more likely than not what this payment was made for, based on emails provided by Mr Governor from Mr Riddiford, at paragraphs [42] to [44] below, which cast significant doubt on whether Mr Governor had worked the hours he claimed on 25 or 26 February 2021, the two days after his accident. While Mr Governor was adamant he had worked the dates in question, he could not remember all the details, as he frankly acknowledged the claims related to matters from four years ago.

[40] Mr Governor also claimed he was made to mow lawns on some or all of his last days working. He could not answer specifically what days that related to, in terms of his claim to have worked light duties on most of the days between 25 February and 3 March 2021.

[41] I consider more likely than not Mr Riddiford physically delivered copies of these emails to Mr Governor and prefer the contents of the 28 February 2021 email as a contemporaneous record that Mr Governor did not work on either 25 or 26 February

2021. On this basis, I accept under s 132(2) of the Act that Mr Riddiford has proved Mr Governor's claims to have worked on 25 and 26 February 2021 to be incorrect.

[42] Relevant portions of the two emails read as follows:

4 March 2021

Good afternoon Dino, ... *Delivered under your door and DR*

4 3 21 Thursday

We agreed that this morning you would head back to Masterton for further medical attention and to ensure that you fully rested your left shoulder so that we both could review your situation and fitness for work on Monday coming 8 March. You handed me a Medical Certificate given by the Hospital on Friday 26 2 21 stating that on Wednesday (when working with Stan) a sheep had hit you causing the shoulder injury. [I noted that it conflict with your explanation to me on earlier occasions that the pain to your left shoulder had developed gradually as you drenched the sheep]. At any event **we agreed that the second page of your hourly sheet from 22 Feb until 26 Feb and earlier should be treated as a week on ACC paid by the Employer. On that basis I have NOW paid for 25-50 hours in week 2 of your sheet (ie 22 Feb to 26 Feb) We agreed that you should not return to work until you and I both were satisfied that you had fully recovered.....** However I said that on Monday 8 March if we had not agreed that you were fully recovered you could remain at Te Awaiti rent free for at least a week to recover. ... [emphasis added]

28 February 2021

Good Afternoon Dino, ... *Delivered under your door and then discussed*

28 2 21

I will hand this letter to you when you return to Te Awaiti or otherwise slip it under the door to your room in the Shearers' Quarters.

I phoned this afternoon to enquire as to your health **since you had not worked on Thursday and Friday and been away from the Station since 8-15am on Thursday**, when I suggested that you take medical advice over your left shoulder. The nurses at Outpatients for Masterton Hospital advised resting your left shoulder and paracetamol for pain (since you had "torn a muscle for which they could do little). You explained that you were right handed. [emphasis added]

We agreed that you would meet Stan on Monday morning at 7-30am at the Vehicle Bay to discuss your shoulder and whether you had recovered adequately. You may need Monday off.

Stan will then discuss the week's work for you (which I anticipate to be repair fencing) ...

[43] What happened in the period from 1 to 9 March 2021 is less clear as emails from Mr Riddiford show he was attempting to arrange a follow-up medical appointment

for Mr Governor on 8 March 2021, with the relevant email stating:

Could you please arrange for my casual employee Mr Dino Governor an appointment with a Doctor on Friday this week to join as a new client, assess his shoulder and ensure he received his ACC

[Handwritten note followed]

DINO

8-3-21

I confirm that this week it is important that you fully recover. Please remember that it is for ACC to pay 80% of your normal wage from after the Employer paying your first *[word is unclear]* week ie all this week and following *[signed by Mr Riddiford]*

[44] Mr Riddiford also had an email exchange with the medical centre, which included him saying on 10 March 2021:

The first week of employer paid compensation was 22-26 Feb I have emphasised to Dino (1) **he must not compromise his shoulder by continuing to work** (2) he must get his own Doctor to aid recovery and as part of the ACC process (3) ACC 80% payments provides some peace of mind (4) he must contact ACC [bold emphasis added, underlining in original]

[45] I consider the statement in this email that Mr Governor “must not compromise his shoulder by continuing to work” calls into doubt Mr Riddiford’s evidence that Mr Governor did not work at all following his accident.

[46] Mr Riddiford’s contemporaneous evidence was inconsistent, as in email exchanges with WINZ dated 12 March 2021 Mr Riddiford acknowledged having received from ACC a claim form in relation to Mr Governor’s injury and having sent that back to ACC. Mr Riddiford also sought ongoing payments of wage subsidies for Mr Governor, with annotations showing this was claimed for 40.5 hours worked between 15 to 22 February 2021, then for the three weeks of 22 February to 1 March 2021, 1 to 7 March 2021 and 7 to 14 March 2021 he sought 36.8 hours with a note of 80% of that amount. This is not consistent with the acknowledged date of the accident or when Mr Riddiford first sent Mr Governor to obtain medical advice.

[47] Mr Riddiford was advised in response by WINZ:

As per our process (for an on the job) work related accidents to all employers, only one week of subsidy which is the first week the worker is on ACC is covered by the subsidy. Employer is obliged to pay 80% of that first week, that is the only week we pay. ...

[48] The WINZ file notes then record a conversation between a WINZ employee and Mr Riddiford in September 2021 which state “Have spoken to [Mr Riddiford] today,

last claim was made to 21.2.21 and employee never returned to work after that so can you please end [wage subsidy] contract using 21.2.21?”

[49] There is no evidence before me that Mr Riddiford paid Mr Governor any ACC first week compensation, which I return to at paragraphs [78] to [90] below.

[50] There is also no evidence before me that Mr Riddiford paid Mr Governor any other amount for the weeks from 1 to 7 March 2021 or 8 to 14 March 2021. In the absence of clear evidence from Mr Riddiford that Mr Governor did not work the hours claimed from 1 to 9 March 2021, I find Mr Governor more likely than not worked the hours he has claimed during this period. This conclusion is based on the combination of Mr Riddiford’s email at paragraph [44] above, which I consider indicates Mr Governor had attempted to continue working, but was then directed to seek further medical advice on 4 March 2021, based on the email of that date at paragraph [42] above. It is also consistent with Mr Governor’s ACC Injury Claim Form dated 28 February 2021 which cleared him to work light duties for the next 10 days subject to the restriction he “avoid any heavy lifting until better”.

[51] While Mr Riddiford claimed he did not instruct Mr Governor to do any particular work, and said any lawn-mowing done during this period would have been Mr Governor’s responsibility as a tenant, I am not satisfied Mr Riddiford has provided sufficient evidence to support his version of events.

[52] Mr Governor’s claim to have worked 28.5 hours during the period from 1 to 9 March 2021 is accepted, based on Mr Riddiford’s failures to:

- (a) produce wage and time records showing hours worked by Mr Governor, as required under s 130(1)(g) of the Act, which I accept prejudiced Mr Governor’s ability to bring an accurate claim supported by wage and time records, under s 132(1) of the Act; and
- (b) prove Mr Governor’s claims as to hours worked and wages paid for the period from 1 to 9 March 2021 are incorrect, as provided for under s 132(2) of the Act.

[53] I do not accept, however, Mr Governor’s claims for sick leave. He worked for slightly less than six months when his employment ended and his employment agreement did not provide for sick leave in advance of the six month eligibility criteria under s 63(1) of the HA2003. In addition, there was no evidence Mr Governor had

requested sick leave or clarity of how that fitted with the hours Mr Governor claimed to have worked on 8 and 9 March 2021.

Mr Governor is owed arrears for 28.5 hours worked but unpaid

[54] For the reasons above, I find Mr Governor is owed arrears for 28.5 hours worked but unpaid. Based on his hourly rate of \$20.00 the amount due is \$570.00 gross and I accept 8% should be added to this amount as annual holiday pay, being a further \$45.60, meaning a total of \$615.60 gross is due. Orders are made accordingly.

Holiday pay

Submissions of the parties

[55] Submissions for Mr Governor claimed he was entitled to annual holiday pay of 8% of his gross wages under s 23(2) of the HA2003 on the basis he had worked for less than 12 months when his employment came to an end. Mr Governor referred also to his employment agreement referring to holiday pay being inclusive, as quoted at paragraph [15] above, and says there was no evidence the correct calculation for holiday pay was made or that holiday pay were recorded in records kept by Mr Riddiford.

[56] Based on Mr Riddiford's records of payments made to Mr Governor, totalling \$18,991.00 gross, annual holiday pay of \$1,519.28 gross is claimed.

[57] Mr Riddiford says annual holiday pay was part of the hourly rate, as recorded in the employment agreement and quoted at paragraph [15] above. Mr Riddiford also says Mr Governor's "wages were not underpaid after 8% is added to the minimum hourly rate, but 5% or more deducted for access to accommodation and facilities in the Shearers' Quarters" (emphasis in original).

Discussion

[58] I asked Mr Riddiford at the investigation meeting on what basis he considered holiday pay had been paid and he reiterated the employment agreement allowed for this, including taking into account "provision of accommodation and other farm perks". I consider it appropriate to approach the question of whether Mr Governor has received annual holiday pay through assessing whether the requirements of s 28 of the HA2003 have been met.

[59] On this basis, I asked Mr Riddiford what he understood was required to comply with s 28 of the HA2003. He said he had discussed this with lawyers who say it is

“highly confusing” but requires “genuine pre-calculation at 8% representing four weeks annual holidays”.

[60] I then stepped Mr Riddiford through the requirements of s 28(1) of the HA2003, which state:

28 When annual holiday pay may be paid with employee’s pay

- (1) Despite section 27, an employer may regularly pay annual holiday pay with the employee’s pay if —
 - (a) the employee —
 - (i) is employed in accordance with section 66 of the Employment Relations Act 2000 on a fixed-term agreement to work for less than 12 months; or
 - (ii) works for the employer on a basis that is so intermittent or irregular that it is impracticable for the employer to provide the employee with 4 weeks’ annual holidays under section 16; and
 - (b) the employee agrees in his or her employment agreement; and
 - (c) the annual holiday pay is paid as an identifiable component of the employee’s pay; and
 - (d) the annual holiday pay is paid at a rate not less than 8% of the employee’s gross earnings.

[61] Mr Riddiford was adamant he had complied with each of those requirements. I accept this is arguable in the case of the requirements in ss 28(1)(a)(ii) and (b) of the HA2003, on the basis of the employment agreement as quoted at paragraph [15] above, notwithstanding the finding I have made at paragraph [22] above that Mr Governor was employed on a fixed-term basis rather than as a casual employee. While the fixed-term employment could have met the requirements of s 28(1)(a)(i) of the HA2003, this is not material given other requirements of s 28(1) of the HA2003 are not met.

[62] Specifically, I do not accept Mr Riddiford has demonstrated that the requirements of ss 28(1)(c) or (d) of the HA2003 have been complied with for the following reasons. Firstly, Mr Governor was paid a flat rate of \$20.00 per hour which was said to be “inclusive of holiday pay”. There is no evidence of annual holiday pay being paid as a separately identifiable component of Mr Governor’s pay as required under s 28(1)(c) of the HA2003.

[63] Secondly, for the period Mr Governor was employed by Mr Riddiford the minimum adult wage under cl 4 of the Minimum Wage Order 2020 was \$18.90 per hour. Adding 8% to this results in a minimum gross pay rate of \$20.41 per hour. Mr Governor was not paid this amount, as would have been required to meet the requirements of s 28(1)(d) of the HA2003.

[64] Mr Governor provided emails between Mr Riddiford and WINZ which were obtained under the OIA and show issues being raised with Mr Riddiford about compliance with HA2003 requirements. In those emails Mr Riddiford says, in response to queries from WINZ, that Mr Governor is employed under a “Casual Contract in which as permitted by caselaw holiday pay is precalculated into the hourly rate”. A WINZ file note says Mr Riddiford was advised the correct rate if paying holiday pay as part of Mr Governor’s hourly wage should be \$20.41 and “he said he would check and make necessary adjustment”. Mr Riddiford provided no explanation of why he did not make this adjustment and appears to persist with the belief he did not need to do so.

[65] At the investigation meeting and in submissions Mr Riddiford also attempted to rely on a general ability to make deductions for accommodation. I find this option is not available to Mr Riddiford as the employment agreement, as quoted at paragraph [15] above, expressly stated “Rental shall be agreed from time to time”. Mr Riddiford said at the investigation meeting this handwritten note on the employment agreement was because Mr Governor wouldn’t agree to pay rental and he conceded, striking out the reference to rental. While Mr Riddiford said his acquiescence to this was intended to be taken into account in Mr Governor’s pay rate, there was no evidence presented such an agreement was ever reached. I find there was no such agreement and Mr Riddiford cannot retrospectively seek to make a deduction for accommodation.

[66] I find that Mr Riddiford cannot rely on s 28(1) of the HA2003 to claim holiday pay has been paid as part of Mr Governor’s regular pay. As a consequence, Mr Governor is entitled to holiday pay under s 23 of the HA2003, which provides:

23 Calculation of annual holiday pay if employment ends within 12 months

- (1) Subsection (2) applies if —
 - (a) the employment of an employee comes to an end; and
 - (b) the employee is not entitled to annual holidays because he or she has worked for less than 12 months for the purposes of section 16.
- (2) An employer must pay the employee 8% of the employee’s gross earnings since the commencement of employment, less any amount —
 - (a) paid to the employee for annual holidays taken in advance; or
 - (b) paid in accordance with section 28.

[67] For the avoidance of doubt, there was no evidence of annual holidays being taken in advance and no payments were made in accordance with s 28(1) of the HA2003.

[68] Based on the bank records provided by Mr Riddiford it appears Mr Governor was paid \$18,250.00 gross during the period from September 2020 until March 2021.⁸ Eight percent of this amount is \$1,460.00. I consider this is the appropriate amount to award, as the slightly higher amount claimed included payments for separate work done in November 2021, where it was not clear Mr Riddiford was the employer.

Mr Governor is owed arrears for holiday pay

[69] For the reasons above, I find Mr Governor is owed arrears of \$1,460.00 gross for holiday pay. Orders are made accordingly.

Public holiday pay and unpaid standdown

Submissions of the parties

[70] Submissions for Mr Governor claimed he was entitled to seven public holidays which fell during the period he was employed, if I determine that he was employed as a fixed-term employee, being Labour Day 2020, Christmas and Boxing Day 2020, 1 and 2 January 2021, Wellington Anniversary Day 2021 and Waitangi Day 2021. A daily rate of \$158.58 is claimed, giving a total claim of \$1,110.06 gross.

[71] Mr Governor also claims for seven unpaid days which were not public holidays and which he was instructed not to work between 23 December 2020 and 3 January 2021. He says these days were not a closedown in terms of s 29 of the HA2003. This claim is also dependent on Mr Governor being determined to be a fixed-term employee. Again, a daily rate of \$158.58 is claimed, giving a total claim of \$1,110.06 gross.⁹

[72] Mr Riddiford says there is no liability for him to pay for unworked ordinary days or public holidays under what he considered was a casual employment agreement.

Discussion

[73] Given I have found at paragraph [22] above that Mr Governor was employed on a fixed-term basis rather than as a casual employee, it follows he is entitled to pay for public holidays which would have otherwise been working days under s 49 of the HA2003. While Mr Governor said he did not work on the seven days claimed, he says

⁸ While two payments were recorded for 6 to 13 February 2021, I have counted one only. For the payment on 3 March 2021 which did not show a gross payment or tax deduction, I have treated this as \$1,340 gross.

⁹ Submissions for Mr Governor claimed \$1,107.80 for these seven days, where the correct calculation based on seven days at \$158.58 totals \$1,110.06 gross.

he worked on 4 January 2021, with bank records showing him being paid for the period from 4 to 17 January 2021. I consider this means he is not entitled to be paid for 2 January 2021, which was a Saturday, as this would not have been a working day for him. He is, however, entitled to be paid for Monday 4 January 2021 under s 45(1)(b) of the HA2003 as an unworked public holiday. I consider he more likely than not did not work on this day, as his evidence was that he did not work on any of the other public holidays during his employment period and there was no explanation given of why he would have worked this observed public holiday only.

[74] I further find Mr Governor was ready, willing and able to work, but instructed not to by Mr Riddiford, between 23 December 2020 and 3 January 2021. He is entitled to be paid for the seven unpaid days which were not public holidays during this period.

[75] Mr Governor's claimed daily rate was based on the total payments recorded as having been made to him including payments for separate work done in November 2021, where it was not clear Mr Riddiford was the employer. I consider the appropriate rate is calculated excluding the payments from November 2021, which means his average daily pay calculated under s 9A of the HA2003 is \$165.91 gross (being based on gross payments of \$18,250.00 during the period from September 2020 until March 2021, divided by 110 days which I calculate Mr Governor would have worked¹⁰). I consider this average daily pay rate is appropriate, given Mr Riddiford has not provided wage and time records showing hours and days Mr Governor actually worked, which would have enabled a more accurate calculation of average daily pay for each day.

[76] For the seven unpaid public holidays and seven unpaid days between 23 December 2020 and 3 January 2021, I calculate Mr Governor is due a total of \$2,322.74 gross.

Mr Governor is owed arrears for unpaid public holidays and unpaid days between 23 December 2020 and 3 January 2021

[77] For the reasons above, I find Mr Governor is owed arrears of \$2,322.74 gross for seven unpaid public holidays, and for seven unpaid days between 23 December 2020 and 3 January 2021. Orders are made accordingly.

¹⁰ The 110 days calculated allows for public holidays not worked, as claimed by Mr Governor.

First week compensation

Submissions of the parties

[78] Submissions for Mr Governor claimed he was entitled to be paid for the week from Wednesday 10 March 2021 until Tuesday 16 March 2021 under s97 of the Accident Compensation Act 2001 (ACA). Mr Governor claims \$685.08 based on an average weekly pay claimed to be \$792.90 gross, plus 8% for holiday pay, less 20% as s 97(2) of the ACA provides “The compensation payable is 80% of the amount of earnings as an employee lost by the employee, as a result of the incapacity, during the first week of incapacity”. Mr Governor alternatively claims \$1,208.00 gross, based on his claimed average wages over the previous four weeks of \$1,510.00 gross.

[79] While Mr Governor says he was injured on 24 February 2021, he also says he continued working until 9 March 2021, as outlined in paragraph [34] above. Mr Governor acknowledged Mr Riddiford assisted him with initially obtaining medical assistance in the weeks following the incident.

[80] Mr Riddiford says Mr Governor’s accident was not work-related, rather resulted from a pre-existing injury. On 11 August 2025 Mr Riddiford copied the Authority Officer and Mr Governor’s counsel when submitting an application to ACC to review its decision on Mr Governor’s injury claim, on the basis Mr Riddiford claims it was not a work-related personal injury. Mr Riddiford claims as a consequence, under s 133(5) of the ACA the Authority is precluded from awarding remedies. Mr Riddiford concludes by stating the “claim for the “ACC “first week wage” must wait for the ACC Review”.

Discussion

[81] It appears from the emails provided by Mr Governor that in the weeks following his injury Mr Riddiford was supportive of his version of events, being that there had been an incident of some form on 24 February 2021 when Mr Governor was working. Mr Riddiford’s emails quoted at paragraphs [42] to [44] above make clear references to an accident occurring and Mr Riddiford arranging medical treatment for Mr Governor.

[82] At some point Mr Riddiford’s account of what happened has changed, as evidenced by his advice to WINZ as recorded in WINZ file notes of a conversation between a WINZ employee and Mr Riddiford in September 2021 which state “Have

spoken to [Mr Riddiford] today, last claim was made to 21.2.21 and employee never returned to work after that ...”

[83] Mr Riddiford now says Mr Governor’s accident was not work-related. Mr Riddiford repeatedly referred to inconsistencies in Mr Governor’s account of events, as well as failures to disclose a historic injury. When I directly asked Mr Riddiford at the investigation meeting whether he had paid ACC first week compensation his response was that he “can’t comment further”.

[84] This strongly suggests that Mr Riddiford has not paid any ACC first week compensation to Mr Governor, as had he done so he could have provided records which showed this. Given the limitation of the information on the bank records Mr Riddiford provided, which only showed gross payments, tax deductions and net payments, I consider it reasonable to conclude there are no records which clearly show payment of ACC first week compensation and no such payments have been made.

[85] I sought information from Mr Riddiford and Mr Governor’s counsel on whether advice had been received on the outcome of Mr Riddiford’s 11 August 2025 application to ACC to review its decision on Mr Governor’s injury claim. Mr Governor’s counsel advised on 1 September 2025 that arrangements are being made for a preliminary determination on whether the ACC review can proceed based on an out of time application. Mr Riddiford advised on 2 September 2025 that he has “received “acknowledgement of ... review application” from ACC, but it did not state any timetable or other procedural steps”.

[86] I accept Mr Riddiford may have a right under s 134(2) of the ACA as “An employer [to] apply to [ACC] for a review of its decision that a claimant’s injury is a work-related personal injury suffered during employment with that employer”. Given Mr Riddiford has lodged a review application, which has not yet been completed, I accept s 133(5) of the ACA precludes me from considering or granting remedies in relation to Mr Governor’s claim for arrears for ACC first week compensation.

[87] It appears, however, Mr Riddiford’s application for review is considerably outside the timeframes for lodging a review application with ACC, as provided under s 135 of the ACA. Given there is a possibility that ACC will allow Mr Riddiford’s application for review to proceed, and a decision on this appears imminent, I consider

it appropriate to defer a determination of whether Mr Governor is entitled to arrears of wages for unpaid first week compensation under ss 97 and 98 of the ACA.

[88] For completeness, given my preliminary view is Mr Riddiford has not paid any ACC first week compensation to Mr Governor, were the bar on considering or granting remedies to Mr Governor under s 133(5) of the ACA not arguably invoked, then I would have awarded an arrears payment to Mr Governor, with the amount to be calculated under s 97(3) of the ACA.

A determination of whether Mr Governor is owed unpaid first week compensation under ss 97 and 98 of the ACA is reserved

[89] For the reasons above, I reserve a determination of whether Mr Governor is owed arrears for unpaid first week compensation under ss 97 and 98 of the ACA until advice is received from Mr Riddiford or Mr Governor on the outcome of Mr Riddiford's application for review.

[90] Once advice on this point is received, the parties are encouraged to reach agreement on whether Mr Governor is due arrears for unpaid first week compensation under ss 97 and 98 of the ACA and the quantum of any arrears due under s 97(3) of the ACA. If agreement cannot be reached, then either party may contact the Authority Officer and request a determination of this claim.

Was Mr Governor's employment agreement breached by Mr Riddiford?

Did Mr Riddiford breach statutory obligations to pay Mr Governor or Mr Riddiford's duty of good faith to Mr Governor?

Should any penalties be imposed on Mr Riddiford for breaches of the WPA or any other statutory provisions and, if so, should any portion of penalties imposed be awarded to Mr Governor?

[91] These three issues are connected, so are addressed in combination. The availability of penalties is dependent on breaches on the part of Mr Riddiford being established and claims having been commenced within statutory timeframes.

Submissions of the parties

[92] Mr Governor claims breaches by Mr Riddiford of:

- (a) record-keeping obligations under s 130 of the Act and ss 81 and 82 of the HA2003, which relate to holiday and leave records;

- (b) non-payment of minimum entitlements under the HA2003 when Mr Governor’s employment ended;
- (c) non-payment of wages at the end of employment, in breach of s 4 of the Minimum Wage Act 1983 (MWA) and s 4 of the WPA, and in breach of s 6 of the MWA; and
- (d) non-payment of first week compensation under ss 28, 97 and 98 of the ACA.

[93] In addition, Mr Riddiford was said to have breached the employer’s obligations in the WINZ wage subsidy agreement by not providing Mr Governor “his corrected status under s 66 of the [Act], of a fixed term employee with all the rights that entails” or wages during the period from 22 December 2020 to 4 January 2021.

[94] Mr Governor sought special damages to the “collective value of his holiday pay and his final pay”, as well as penalties based on six statutory breaches in accordance with the Court’s guidance on determining penalties in *Boorsboom v Preet PVT Limited*.¹¹ Additional penalties were claimed to be warranted based on Mr Riddiford’s behaviour, including failures to pay wages, refusal to attempt to resolve Mr Governor’s wages arrears claims and refusal to attend mediation.

[95] Mr Riddiford says the claims for penalties are not available as they were not commenced within the timeframes required under s 135(5) of the Act.

[96] Mr Governor says in response that the timeframe Mr Riddiford refers to under s 135 of the Act is different to the awarding of penalties under s 134 of the Act and “[s]hould penalties be awarded to [Mr Governor], we anticipate no delay in the recovery of these”.

Discussion

[97] I accept Mr Riddiford’s submission that Mr Governor’s claims for penalties were not commenced within the timeframes required under s 135(5) of the Act. Sections 133 to 135 of the Act read together provide the Authority with jurisdiction concerning penalties, with s 133(1) of the Act clearly stating:

- (1) The Authority has full and exclusive jurisdiction to deal with all actions for the **recovery of penalties** under this Act—
 - (a) for any breach of an employment agreement; or

¹¹ *Boorsboom v Preet PVT Limited* [2016] NZEmpC 143.

- (b) for a breach of any provision of this Act for which a penalty in the Authority is provided in the particular provision.

(emphasis added)

[98] Section 135(5) of the Act provides the timeframe for a penalty action to be commenced, stating:

- (5) An action for the **recovery of a penalty** under this Act must be commenced within 12 months ... after the earlier of—
 - (a) the date when the cause of action first became known to the person bringing the action; or
 - (b) the date when the cause of action should reasonably have become known to the person bringing the action.

(emphasis added)

[99] Mr Governor's employment ended in March 2021. Mr Governor was represented by counsel in engagements with Mr Riddiford from April 2021. While the process of engagement with Mr Riddiford was drawn out, I consider the last possible date when Mr Governor could have been aware of the causes of action underpinning his penalties claims was when he received OIA documents from MSD, which occurred on 1 December 2021.

[100] Mr Governor commenced the action for recovery of a penalty when his Statement of problem was lodged on 22 December 2023. This is significantly outside the timeframe provided under s 135(5) of the Act. I do not accept Mr Governor's submission the timeframe under s 135 of the Act is different to that under either ss 133 or 134 of the Act, as these sections are clearly linked.

[101] Consequentially, I have no jurisdiction to consider Mr Governor's claims for penalties.

[102] Neither am I satisfied an award of special damages is appropriate. The Court judgment cited¹² by Mr Governor does not appear to support this claim. This claim was also not advanced prior to submissions. I decline to consider it further.

Outcome

[103] Mr Governor's claims for penalties and special damages are unsuccessful.

¹² *F v Attorney-General* [1994] 2 ERNZ 62.

Should interest under the IoMCA be ordered to be paid based on any amounts found to have been unpaid?

Submissions of the parties

[104] Mr Governor submitted I should order payment of interest on the arrears due to him under the IoMCA, as he has not been paid amounts he was due for more than four years, with Mr Riddiford having had the benefit of the arrears for that period of time. Interest is sought from 10 March 2021 until arrears and all interest are paid to Mr Governor.

[105] Mr Riddiford says payment of interest is at the discretion of the Authority, with delays due to proceedings being issued against the wrong employer party. He also says interest should not be determined until his counterclaim is considered and ACC has completed its review.

Discussion

[106] Given the arrears due to Mr Governor arose during his employment with Mr Riddiford, with the latest payment due in his final pay in March 2021, I accept an order for payment of interest is appropriate.

[107] As discussed in paragraph [7] above, Mr Riddiford has not progressed his counterclaim and was advised it would be considered separately. I do not consider either the counterclaim or ACC review are relevant to whether an order for payment of interest should be made, given the interest relates to amounts I have found Mr Riddiford should have paid Mr Governor some time ago.

Outcome

[108] I order Mr Riddiford to calculate and pay Mr Governor interest on the amount of \$4,398.34 gross in accordance with the IoMCA from 10 March 2021 until this amount has been paid in full, to be calculated using the civil debt calculator on the Ministry of Justice website.¹³

¹³ <https://www.justice.govt.nz/fines/civil-debt-interest-calculator/>.

Orders

[109] For the above reasons I order Daniel Riddiford to pay Dino Governor within 28 days of the date of this determination arrears under s 131 of the Employment Relations Act 2000 totalling \$4,398.34 gross, comprising:

- a. \$570.00 gross for 28.5 hours worked but unpaid, plus 8% for annual holiday pay, being a further \$45.60, meaning a total of \$615.60 gross is due;
- b. \$1,460.00 gross for holiday pay on wages paid during the period from September 2020 until March 2021; and
- c. \$2,322.74 gross for seven unpaid public holidays and seven unpaid days between 23 December 2020 and 3 January 2021.

[110] In addition, I order Mr Riddiford to calculate and pay Mr Governor interest on the amount of \$4,398.34 gross in accordance with the Interest on Money Claims Act 2016 from 10 March 2021 until this amount has been paid in full, to be calculated using the civil debt calculator on the Ministry of Justice website.¹⁴

Next steps for deferred claim

[111] I have deferred making any determination of whether Mr Governor is owed arrears for unpaid first week compensation under ss 97 and 98 of the ACA until advice is received from Mr Riddiford or Mr Governor on the outcome of Mr Riddiford's application for review. If required, either party may contact the Authority Officer and request a determination of this claim.

Costs

[112] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[113] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Governor may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Mr Riddiford will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

¹⁴ <https://www.justice.govt.nz/fines/civil-debt-interest-calculator/>.

[114] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors require an adjustment upwards or downwards.¹⁵

[115] As the investigation meeting for this matter took most of one full day, my preliminary view is the notional daily rate for one day is the appropriate starting point for a determination of costs.

[116] While other respondents were previously named in relation to this matter, I consider costs should lie where they fall in relation to those other respondents. Mr Riddiford conceded at the investigation meeting that he rather than Te Awaiti Station was the employer and there is no evidence Te Awaiti Station, which appears to have been a location rather than a legal entity, incurred any costs. The Partnership was briefly named as a respondent, however, was promptly removed at a confer case management conference and should have incurred minimal, if any, costs for the brief period it was involved in this matter.

Shane Kinley
Member of the Employment Relations Authority

¹⁵ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1