

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 113/09
5150270

BETWEEN LABOUR INSPECTOR JON
 HENNING
 Applicant

AND REID PATTERSON LIMITED
 Respondent

Member of Authority: James Crichton

Representatives: Jon Henning in Person
 Marlene Patterson, for Respondent

Submissions received: 19 June 2009 from Applicant

Determination: 24 July 2009

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant Labour Inspector claims that the respondent (Reid Patterson) owes Ms Monique Tamblyn holiday pay of \$2,457.59.

[2] In the normal way, an assessment was made by Mr Henning after the acquisition of the appropriate records from Reid Patterson. Mr Henning assessed the holiday pay due as the figure just referred to, and invited a response from Reid Patterson.

[3] In the first instance, there was no response, either by way of payment of the amount due and owing or by way of contesting the calculation of the said sum. The Authority convened a telephone conference on 10 March 2009 to progress the matter and, in the course of that conference, Ms Patterson accepted that the debt was owed, accepted the calculation, but referred to significant financial difficulties in the business, including an allegation that money had been embezzled from the business.

[4] As a consequence of what seemed to be a genuine case of hardship on the part of the employer, I directed that the parties were to negotiate matters between them to establish if it was possible to agree a repayment schedule.

[5] Progress was made in that regard, but the in principle agreement was never implemented. On that basis then, I issued a notice of direction dated 16 June 2009 in which I indicated my intention of dealing with the matter on the papers and invited submissions from both parties.

[6] In the result, only Mr Henning provided those submissions within the timetable set. Those submissions helpfully set out the actions taken by Mr Henning in pursuit of his statutory obligations since the most recent contact the Authority has had with the file. The short point is that Ms Patterson now says she has suffered an illness which has delayed her ability to address the issues. Mr Henning observes in his submissions that, notwithstanding the appearance of hardship, this employer has made a succession of excuses and has never complied with a timetable previously agreed to.

Determination

[7] I am satisfied that Reid Patterson has had every reasonable opportunity to fulfil its obligations in this matter by way of the payment to the Labour Inspector for the use of Ms Tamblyn, of holiday pay due and owing of \$2,457.59.

[8] I am further satisfied that Reid Patterson has failed on every occasion to conform to an agreement made with Mr Henning. Further, Reid Patterson has failed at every opportunity to comply with the Authority's reasonable requests for the matter to be dealt with promptly and despite the latitude I have given in what I consider to be a proper exercise of my discretion, Reid Patterson has continued to fail to meet its obligations as a good employer.

[9] It follows that the following orders are required to remedy Reid Patterson's default:

- (a) An order directing that Reid Patterson pay to the Labour Inspector at Dunedin for the use of Monique Tamblyn holiday pay in the sum of \$2,457.59 gross;

- (b) A penalty in the sum of \$2,000 for the breach of the Holidays Act 2003, the breach being a continuous one and the initial failure of the appropriate calculation being very significant indeed. The penalty is to be paid to Ms Tamblyn.

Costs

[10] Costs are to lie where they fall.

James Crichton
Member of the Employment Relations Authority