

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
OFFICE**

BETWEEN George Jennings
AND Rodney's Welding Shop Limited
REPRESENTATIVES George Jennings in person
No appearance by respondent
MEMBER OF AUTHORITY Dzintra King
INVESTIGATION MEETING 1 September 2006
DATE OF DETERMINATION 5 September 2006

DETERMINATION OF THE AUTHORITY

The applicant, Mr George Jennings, seeks the payment of unpaid annual leave and the reimbursement of wages deducted for purportedly unsatisfactory work. He also seeks a penalty for breach of the Holidays Act 2003 and the Wages Protection Act 1983.

At the time the Investigation Meeting was due to commence a Mr Ian Fewtrell appeared and told me that Mr Rodney Brown, the director and shareholder of the respondent, would not be appearing because the company was in the process of liquidation. Mr Fewtrell said he was from an organisation called Northland Business Consultants. Mr Fewtrell is a director of a company called Rodneys Welding Limited (Mr Rodney Brown is the other director and shareholder), which was incorporated in March 2006. Mr Fewtrell had telephoned the Authority office in Auckland on the morning of the hearing and told the support officer that the company was no longer trading.

A check of the Companies Office register shows that Rodneys Welding Shop Limited is still on the Register and there is no indication that the company is in liquidation.

As the respondent chose not to appear I have based my determination on the evidence given by the applicant.

Annual Leave

Mr Jennings was employed on 28 February 2005 and the employment ended on 15 February 2006. A perusal of the available documents and Mr Jennings' evidence indicate that he is owed payment for three days' annual leave.

Mr Jennings' earnings for 51 weeks were \$43,965. Three days' leave totals \$527.58.

Section (1) (b) Holidays Act provides that payment for annual holidays must be made when an employee's employment comes to an end. Subsection (2) states that if subsection (1) (b) applies, the employer must pay the annual holiday pay in the pay that relates to the employee's final period of employment. The respondent did not pay the holiday pay owing upon termination of employment.

Unauthorised Deductions

The Wages Protection Act provides that no deductions from wages are to be made except in accordance with the Act. Section 4 provides:

Subject to sections 5(1) and 6(2) of this Act, an employer shall, when any wages become payable to a worker, pay the entire amount of those wages to that worker without deduction.

Section 6(2) deals with overpayments and is not relevant here.

Section 5 provides for deductions with the worker's consent.

*(1) An employer may, for any lawful purpose,—
 (a) With the written consent of a worker; or
 (b) On the written request of a worker—
 make deductions from wages payable to that worker.*

In February 2006 Mr Brown made deductions from Mr Jennings' wages. Mr Jennings had not authorised the deductions. Mr Brown deducted twelve and a half hours wages. Mr Jennings' pay rate was \$18.00 per hour. The amount of the illegal deduction was \$225.00.

Penalties

Section 13 Wages Protection Act provides:

Where

*(a) any payment is made by or on behalf of any employer in contravention of this Act;
 or*

*(b) any employer or any person on that employer's behalf contravenes or fails to comply with any of the provisions of this Act,—
 that employer is liable, at the suit of the worker or of a Labour Inspector designated under section 223 of the Employment Relations Act 2000, to a penalty imposed under that Act by the Employment Relations Authority.*

Section 135 (2) Employment Relations Act 2000 provides that the penalty for an individual is not to exceed \$5000 and for a company it is not to exceed \$10,000.

Section 136 Employment Relations Act 2000 provides for the application of penalties recovered:

(1) Subject to any order made under subsection (2) every penalty recovered in any penalty action, whether before the Authority or the Court, must be paid into the Authority or the Court, as the case requires, and not to the plaintiff, and must then be paid by the Authority or the Court into the Crown Bank Account.

(2) The Authority or the Court may order that the whole or any part of any penalty recovered must be paid to any person.

I am satisfied that the respondent breached the Wages Protection Act. The respondent did not appear and offer any explanation. The respondent is to pay a penalty of \$4000 for the illegal deduction of wages. Of this, \$2000 is to be paid into the Authority which will then pay that sum into the Crown Bank Account. The other \$2000 is to be paid to the applicant.

With regard to the penalty sought for breach of the Holidays Act, pursuant to s.76 (1) Holidays Act only a Labour Inspector may bring an action in the Authority to recover a penalty for breach of s.75 Holidays Act. This action was brought by the applicant and not by a Labour Inspector and I am therefore unable to award a penalty for a breach of the Holidays Act.

Interest

Schedule 2 Employment Relations Act 2000 empowers the Authority to award interest in any matter involving the recovery of any money at a rate not exceeding the 90-day bill rate plus 2%.

Interest is to be paid on the monies owing from the date of termination at the rate of 9.5% the interest to run from the date of termination until the monies owing are paid in full.

Costs

Mr Jennings is entitled to be paid his filing fee of \$70

Summary

The respondent is to make the following payments to the applicant:

1. Filing fee \$70.00
2. Annual leave \$527.58
3. Deduction reimbursement \$225.00
4. Penalty \$2,000.00
5. Interest at 9.5% on items 2 and 3.

The respondent is to pay \$2,000 as a penalty to the Crown.

Dzintra King
Member of Employment Relations Authority