



**Was Good Friday 21 March 2008 a day that would otherwise have been a working day for Ms Brosnan?**

[4] The employment agreement between the parties provides for public holidays to be paid in accordance with the Holidays Act. The Act provides minimum entitlements which cannot be excluded, restricted or reduced by an employment agreement (s.6).

[5] Section 49 of the Act provides for an employee to be paid their relevant daily pay where the employee does not work on a public holiday and the day would otherwise have been a working day for the employee.

[6] Section 12 of the Act clarifies how to determine whether a day would otherwise be a working day for an employee. The Act lists three factors to be taken into account. They are:

- The employee's employment agreement;
- The employees work patterns;
- Other relevant factors including whether the employee works for the employer only when work is available; the employer's rosters or other similar systems; and the reasonable expectations of the parties that the employee would work on the day.

[7] *The employment agreement* - the employment agreement between the parties states that employees will be paid for a public holiday if they "...are ordinarily required to work on such days." This clause mirrors the obligation under the Act to pay an employee who does not work on a public holiday if they would normally be required to work on that day.

[8] Mr Pepper told me his understanding of the clause and the Holidays Act is that employees are only entitled to be paid for the day if they are rostered on to work on the day on which a public holiday falls and are not required to work.

[9] *Work Patterns* - copies of the rosters for the period 4 February to 30 March 2008 inclusive were provided to the Authority. Those rosters show Ms Brosnan was rostered to work on all six Friday's leading up to Good Friday, 21 March. Ms Brosnan was also rostered to work the following week, on Friday 28 March 2008.

[10] Mr Pepper provided copies of Ms Brosnan's timesheets to the Authority for the period 28 January to 30 March 2008. The timesheets show Ms Brosnan worked as follows:

Dates	Mon	Tue	Wed	Thurs	Fri	Sat	Sun	Total Hours
28 Jan – 3 Feb	0	0	9.5	8.75	9	7.75	7	42
4 Feb – 10 Feb	0	9	9.5	8.75	9	0	0	36.25
11 Feb – 17 Feb	9	0	0	5.75	9	10	7	40.75
18 Feb – 24 Feb	0	9	9.5	8.75	9	Sick	0	36.25
25 Feb – 2 Mar	9	9	9.5	9.5*	9*	0	0	46
3 Mar – 9 Mar	0	9	0	8.75	9	10	7	43.75
10 Mar – 16 Mar	9	0	0	8.75	9	7.75	7	41.50
17 Mar – 23 Mar	9	0	9.5	8.75	G/F	7.75	0	44
24 Mar – 30 Mar	9	9	9.5	7.25	9	0	0	43.75

\* Taken as days off in lieu for working on Boxing Day 2007 and New Years day 2008.

[11] Ms Brosnan worked (or would have worked) every Friday except Good Friday and she consistently worked nine hours each Friday. Ms Brosnan took one Friday off as a day in lieu for working on New Years day 2008. This was done in accordance with the Act which requires such days in lieu to be taken on a day that would otherwise be a working day for the employee.

[12] Mr Pepper explained to me the difficulties in rostering employees on when there are only three full time staff members, and in circumstances where people have to take sick leave, or other types of leave or want particular days off. Mr Pepper was under the misapprehension that in determining whether Friday was an otherwise working day for Ms Brosnan, he only had to take into account the roster for that week. To get an overall view of the patterns of work of any individual employee it is necessary to go back further in the roster cycle than just one week.

[13] *Other relevant factors* – there was no dispute that Ms Brosnan was employed to work on a permanent basis. Ms Brosnan's usual days and hours of work were set by way of roster which was available to her two weeks in advance.

## Conclusion

[14] I find that the wording in the employment agreement reflects the statutory obligation to pay employees based on whether the employee would otherwise work on

a day on which a public holiday falls. I also find, without doubt, that Ms Brosnan's work patterns were such that leading up to 21 March, Friday was a day that would ordinarily be worked by her, and was therefore, an otherwise working day for her.

[15] It follows, from my conclusions above, that Ms Brosnan is entitled to payment for Good Friday, 21 March 2008.

**Red Planet Chartwell Limited is ordered to pay to the Labour Inspector for Ms Brosnan's credit the gross sum of \$117.00 gross within 28 days of the date of this determination.**

### **Interest**

[16] The Authority has discretion to award interest on outstanding wages. The respondent's refusal to pay Ms Brosnan for Good Friday following the Labour Inspector's determination warrants an award of interest for the period she has been denied what is owed to her.

[17] The interest calculated under clause 11 of Schedule 2 of the Employment Relations Act is to be at a rate of not greater than the 90-day bill rate at the date of the order plus 2 percent. Interest is to be paid at the rate of 8%.

**Red Planet Chartwell Limited is ordered to pay to the Labour Inspector for Ms Brosnan's credit interest on the sum of \$117.00 at the rate of 8% per annum from 21 March 2008 until the date of payment. Such interest shall be paid within 28 days of the date of this determination.**

### **Costs**

[18] Ms MacRury shall have the lodgement fee on this application.

**Red Planet Chartwell Limited is ordered to pay to the Labour Inspector \$70.00 in reimbursement of the filing fee on this application within 28 days of the date of this determination.**

Vicki Campbell  
Member of Employment Relations Authority