

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**AA 429/09  
5283874**

BETWEEN CHRISTINE ANN MCLEAN  
(LABOUR INSPECTOR)  
Applicant

AND TROY VAN DOORNE  
Respondent

Member of Authority: Leon Robinson

Representatives: Applicant In Person  
No appearance by Respondent

Investigation Meeting: 1 December 2009 at Hamilton

Determination: 1 December 2009

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**DETERMINATION OF THE AUTHORITY**

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**The problem**

[1] The applicant labour inspector Ms Christine Ann McLean ("the Inspector") applies to the Authority pursuant to section 228 of the *Employment Relations Act 2000* ("the Act") to recover arrears of wages being gross annual holiday pay owing to an employee Mr Lucas Joel Cronin ("Mr Cronin") together with interest and penalties. Mr Cronin was formerly employed by the respondent sole trader Mr Troy Van Doorne ("Mr Van Doorne"), as a brick layer from 2003 until October 2008.

[2] I have amended the intituling of these proceedings to show Mr Van Doorne as the respondent and not his trading name or any suggested partnership with his wife. I also note that the application was lodged on 16 October 2009. I am prepared to accept that the employment ended at the end of October 2008 and on that basis I accept that the application for penalty has been made within the time prescribed by law.

[3] Contrary to the prescribed regulations, Mr Van Doorne did not lodge a statement in reply. The Inspector's statement of problem was served at his home address. I am satisfied the application and the notice of investigation meeting were served on Mr Van Doorne because he has acknowledged the same. Mr Van Doorne has not taken any steps to defend the application and he did not attend the Authority's investigation meeting to be heard.

[4] On the afternoon of 30 November 2009, I telephoned Mr Van Doorne to ascertain his intentions with respect to the application. Mr Van Doorne confirmed he was aware of the application and the scheduled investigation meeting and further, that he would not attend. At the scheduled investigation meeting there was no attendance by the respondent and I was satisfied there was no good reason shown for that non-attendance. I proceeded to act as fully in the matter as if the respondent had attended.

### The claim for wage arrears

[5] By section 228 of the Act the Inspector has standing to bring a claim for arrears of wages in an employee's name under section 131 of the Act. The Inspector seeks to recover arrears of wages in the sum of \$2,400.00 being holiday pay due to Mr Cronin under the *Holidays Act 2003*.

[6] The sum of \$2,400.00 is Mr Cronin's own assessment of what he is owed as holiday pay. I find that the Inspector sought to verify the sum alleged by Mr Cronin to be owing. The Inspector corresponded with Mr Van Doorne making formal request for wage and time records by letters dated 7 April 2008 and 28 April 2008 as well as various telephone messages left for Mr Van Doorne. Despite that repeated and formal request, Mr Van Doorne did not provide the information sought.

[7] Because of his failure to produce appropriate verifying records, I accept Mr Cronin's contention as communicated to the Inspector that Mr Cronin is owed the gross sum of \$2,400.00 as holiday pay. I am satisfied that there has been default in payment to the employee Mr Cronin of wages in the form of annual holiday pay in the gross sum of \$2,400.00. **I order Troy Van Doorne to pay to the Inspector for Lucas Joel Cronin's credit the gross sum of \$2,400.00.**

[8] As Mr Cronin has stood out of his arrears of wages since the termination of his employment, it is right that he have interest on it. **I order Troy Van Doorne to pay to the Inspector for Lucas Joel Cronin's credit, interest of \$96.00 (being one year's interest at 4%).**

### The claim for penalties

[9] The Inspector makes application for two penalties against Mr Van Doorne. The first relates to his failure to provide wage and time records when requested by the Inspector. The second is in respect of the failure to pay to Mr Cronin the annual leave owing to him at the termination of the employment.

#### *Penalty for failing to provide wage, time and leave records*

[10] The Inspector alleges Mr Van Doorne failed to comply with formal request to provide wage, time and leave records. The allegation is not defended and is not challenged.

[11] Section 229 of the Act is as follows:-

229 *Powers of Labour Inspectors*

(1) *For the purpose of performing his or her functions and duties under any Act specified in section 223(1), every Labour Inspector has, subject to sections 230 to 233, the following powers:*

(d) *the power to require any employer to supply to the Labour Inspector a copy of the wages and time record or holiday and leave record or employment agreement or both of any employee of that employer*

...

(3) *Every employer who, without reasonable cause, fails to comply with any requirement made of that employer under subsection (1)(c) or subsection (1)(d) is liable, in an action brought by a Labour Inspector, to a penalty under this Act imposed by the Authority.*

[12] I find that the Inspector corresponded with Mr Van Doorne making formal request for wage, time and leave records by letters dated 7 April 2008 and 28 April 2008 as well as various telephone messages left for Mr Van Doorne. Despite those repeated and formal requests Mr Van Doorne did not provide the information sought.

[13] I am satisfied, on the balance of probabilities, that Mr Van Doorne did not comply with the Inspector's formal request to supply the wage, time and leave records in respect of Mr Cronin's employment. I am satisfied that Mr Van Doorne had no reasonable excuse for his failures. I conclude a penalty is warranted. **I order Troy Van Doorne to pay a penalty of \$1,000.00 pursuant to section 229(3) of the Employment Relations Act 2000. Half of that penalty shall be paid into the Authority and the other half shall be paid to the Inspector for Mr Cronin's credit.**

***Penalty for failing to provide payment for annual holidays***

[14] The Inspector alleges Mr Van Doorne failed to comply with the provisions of the *Holidays Act 2003* which entitled Mr Cronin to payment for his annual holidays owing at the termination of his employment. The allegation is not defended and is not challenged.

[15] Section 75 of the *Holidays Act 2003* is as follows:-

75. *Penalty for non-compliance*

(1) *An employer who fails to comply with any of the provisions listed in subsection (2) is liable,—*

(a) *if the employer is an individual, to a penalty not exceeding \$5,000:*

(b) *if the employer is a company or other body corporate, to a penalty not exceeding \$10,000.*

(2) *The provisions are—*

(a) *section 16 and sections 21 to 28 (which relate to an employee's entitlement to, and payment for, annual holidays):*

(b) *section 40(3) (which relates to an employee's entitlement to be paid for a public holiday that would have occurred during the employee's annual holidays):*

(c) *section 46, sections 49 to 56, section 60, and section 61(3) (which relate to an employee's entitlement to, and payment for, public holidays and alternative holidays):*

(d) *section 63, section 65, and sections 69 to 72 (which relate to an employee's entitlement to, and payment for, sick leave and bereavement leave):*

(e) *section 83 (which relates to the failure to keep or provide access to a holiday and leave record).*

[16] I am satisfied that Mr Van Doorne failed to make payment to Mr Cronin for his annual holidays due at the termination of the employment.

[17] I am satisfied, on the balance of probabilities, that Mr Van Doorne did not make payment to Mr Cronin for annual holidays and in failing to do so failed to comply with sections 16, 21, & 24 of the *Holidays Act 2003*. I am satisfied that Mr Van Doorne had no reasonable excuse for his failures. I conclude a penalty is warranted. **I order Troy Van Doorne to pay a penalty of \$1,000.00 pursuant to section 75(1)(a) of the Holidays Act 2003. Half of that penalty shall be paid into the Authority and the other half shall be paid to the Inspector for Mr Cronin's credit.**

[18] **I order Mr Van Doorne pay to the Inspector the sum of \$70.00 being the lodgement fee on this application.**

[19] The "judgment" sum of this Determination is a total of \$4,566.00. Mr Van Doorne has had ample notice of this application and its consequences. I am persuaded however that his financial position permits me to order the payment of that judgment sum by instalment. I therefore order that the judgment sum be paid by instalment as follows:-

<b>Payment</b>	<b>Due date</b>
\$566.00	On or before 1 January 2010
\$1,000.00	On or before 1 February 2010
\$1,000.00	On or before 1 March 2010
\$1,000.00	On or before 1 April 2010
<u>\$1,000.00</u>	On or before 1 May 2010
<b>\$4,566.00</b>	

Leon Robinson  
**Member of Employment Relations Authority**