

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 209/09  
5164908

BETWEEN                      NICOLA MEDWAY,  
   LABOUR INSPECTOR, OF  
   THE DEPARTMENT OF  
   LABOUR, ON BEHALF OF  
   REBECCA GRANT,  
   Applicant

AND                                HELDAVE LIMITED  
   Respondent

Member of Authority:      P R Stapp

Representatives:            Nicola Medway in person  
   Ken Green for Respondent

Investigation Meeting:     22 December 2009 at Masterton

Submissions received:     22 December 2009

Determination:              22 December 2009

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**CONSENT DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Nicola Medway a Department of Labour, Labour Inspector, lodged an arrears claim for holiday pay, on behalf of **Rebecca Grant**, against Heldave Limited, Ms Grant's employer.

[2] Up until the Authority's investigation meeting there have been no payments made on the sums allegedly owing. However during the Authority's investigation meeting an agreement was reached and both parties agreed to a consent order with the knowledge of the following.

## **Issues**

[3] The issue has been about the payment of the sums owing as calculated by Ms Medway.

## **The facts**

[4] Heldave Limited is a company carrying on business as a retailer and wholesaler of "Wakelin House Gourmet Products". The primary workplace is a restaurant located in Greytown. The registered office is the same place. The directors of the company are: David Smith, Helen Smith, Kenneth Green and Sheila Green.

[5] According to the records Ms Rebecca Grant was employed as a casual waitress in the periods 11 May 2006 to 26 November 2006 and 1 February 2007 to 13 December 2008. Ms Grant requested the labour inspector to investigate alleged breaches of the Holidays Act where the employer failed to pay outstanding public holidays and annual holiday payments to Ms Grant.

[6] The company replied that Ms Grant is only claiming because she has been cajoled by another employee to seek the payments when she knew that her weekly payments included holiday pay. The company relied on holiday pay being incorporated in the regular pay, but did not itemise the component.

[7] The inspector pointed out to the company the law and Ms Grant's entitlement.

## **Consent Determination**

[8] Following a discussion during the investigation meeting on the law and the Holidays Act requirements the parties were able to come to a settlement. I am satisfied that consent was given in writing as to the parties' agreement. There is a signed record retained on the Authority's file.

[9] By consent Mr Green accepted the inspector's calculation of arrears was correct on the basis of outstanding public holidays and annual holidays as claimed when alternative annual holidays for work undertaken on public holidays was not paid

and annual holidays were not paid when the employment ended on 13 December 2008. There was no challenge to the inspector's details, except that the employer relied on a mistake on how it treated the holiday pay by including it in the regular pay, but without detailing the component.

[10] I am satisfied that Heldave Limited owes Ms Grant a total of \$1,605.55 for public holidays and annual holidays, according to the inspector's calculation. This is supported by the paper work including the wages time and holiday records. Mr Green accepted that the payment would need to be made.

[11] By consent I order Heldave Limited to pay to Nicola Medway Labour Inspector care of the Department of Labour for Ms Rebecca Grant's use the sum of \$1,605.55 for public holidays and annual holidays by 29 January 2010.

[12] By consent it was agreed that interest on the sum due will be paid by Heldave Limited to Nicola Medway Labour Inspector care of the Department of Labour for Ms Rebecca Grant's use. By consent I order Heldave Limited to pay a rate of 4.5% per annum on \$1,605.55 from 13 December 2008 until the date of payment, the agreed date of payment being by 29 January 2010 (\$80.76). The sum of interest payable is to be adjusted for any earlier payment made before 29 January 2010.

[13] Leave is granted for the parties to return to the Authority if there is any dispute on the calculation of the interest.

[14] There is no issue on costs.

P R Stapp  
Member of the Employment Relations Authority