

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 208/09
5150841

BETWEEN NICOLA MEDWAY,
 LABOUR INSPECTOR, OF
 THE DEPARTMENT OF
 LABOUR, ON BEHALF OF
 KEVIN PRESCOTT,
 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

CONSENT DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Nicola Medway a Department of Labour, Labour Inspector, lodged an arrears claim, on behalf of **Kevin Prescott**, against Heldave Limited, Mr Prescott'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 wholesale marketer 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 Mr Kevin Prescott was employed on a full time basis as a head chef in the period 18 September 2006 until 9 December 2008. Mr Prescott requested the labour inspector to investigate alleged breaches of the holidays Act and the failure of the employer to pay outstanding public holidays and annual holiday payments.

[6] The company replied that it has a claim with Mr Prescott in regard to costs/expenses incurred by him when he was working for the company and that it tried to ensure that he did not receive any less money when there was a change over to new employment arrangements. 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 that the arrangements pertaining to Mr Prescott’s employment did not meet the law regarding holiday payments. The other matters claimed by the company are not the subject of any claim in these proceedings.

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 when alternative annual holidays for work undertaken on public holidays was not paid and annual holidays were not paid when the employment ended on 9 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 Mr Prescott a total of \$5,879 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 Mr Kevin Prescott's use a total of \$5,879 for public holidays and annual holidays by 29 January 2009.

[12] By consent it was agreed that interest on the sum will be paid by Heldave Limited to Nicola Medway Labour Inspector care of the Department of Labour for Mr Prescott's use. By consent I order Heldave Limited to pay to Nicola Medway Labour Inspector care of the Department of Labour for Mr Prescott's use a rate of 4.5% per annum from 9 December 2008 until the date of payment, the agreed date being by 29 January 2010 (\$298.61). 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

