

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Labour Inspector (Kris Michael Metcalf) (Applicant)

AND Peni Lalohea (Respondent)

REPRESENTATIVES Kris Metcalf In person
Peni Lalohea, no appearance for the respondent

MEMBER OF AUTHORITY Marija Urlich

INVESTIGATION MEETING 27 October 2005

DATE OF DETERMINATION 31 October 2005

DETERMINATION OF THE AUTHORITY

[1] Tomasi Masima and Moses Masima were employed by Peni Lalohea trading as PKL Construction Contractor for two months from May 2004. Mr Lalohea recruited Messers Masima from the church they all attended. The Labour Inspector's inquiries show Messers Masima have not received the minimum wage prescribed at \$9 per hour gross effective 1 April 2004 and have not received holiday pay on termination of employment.

[2] The Labour Inspector seeks orders requiring Mr Lalohea to pay minimum wages and holiday pay owed to Messers Masima, an award of interest on those sums and penalties for failing to pay minimum wages and holiday pay and failing to produce wage, time and holiday records to a Labour Inspector, costs and disbursements.

[3] Mr Lalohea has failed to produce wage, time and holiday records despite requests from the Labour Inspector to do so. He has failed to file a statement in reply and did not attend the scheduled investigation meeting, without explanation.

[4] I am satisfied Mr Lalohea has failed to pay monies due and owing to Messers Masima, that he is aware of the Labour Inspector's claim, that demand for those monies has been made and that he has been served with a notice of the scheduled investigation meeting. Mr Lalohea has acknowledged receipt of the Labour Inspector's request for records and demand for the sums owed. Despite this and without explanation he continues to fail to fulfil his legal obligations. These failures render him liable to a penalty, liability for which I am satisfied he was put on notice at an early stage.

Orders

[5] Mr Lalohea is to pay to the Labour Inspectorate:

- \$360.00 gross wages and \$384.00 gross holiday pay owing to Moses Masima, for the benefit of Moses Masima;

- \$243.00 gross wages and \$580.50 gross holiday pay owing to Tomasi Masima, for the benefit of Moses Masima;
- interest on the above amounts at the rate of 7%, to be calculated from the date written demand for payment of these sums was first made on Mr Lalohea by the Labour Inspector, being 2 June 2005, until such time as the wages and holiday pay are paid in full, for the benefit of Messers Masima;
- a penalty of \$2000 pursuant to section 10 of the Minimum Wage Act 1983 for failure to pay minimum wages due and owing, \$1000 of this sum to be paid for the benefit of Messers Masima jointly, the remainder to the Authority and then to the Crown bank account;
- a penalty of \$2000 pursuant to section 75 of the Holidays Act 2003 for failure to pay holiday pay due and owing, \$1000 of this sum to be paid for the benefit of Messers Masima jointly, the remainder to the Authority and then to the Crown bank account;
- a penalty of \$2000 pursuant to section 229(3) of the Employment Relations Act 2000 for failure to produce wage, time and holiday records, \$1000 of this sum to be paid for the benefit of Messers Masima jointly, the remainder to the Authority and then to the Crown bank account; and
- the filing fee of \$70.00.

[6] These payments are to be made within 28 dates of the date of this determination.

Marija Urlich
Member of Employment Relations Authority