

Revenue, that the company had no funds to make payment to the applicants and that there was no point in filing a statement in reply.

[4] The Authority convened a conference call on 4th September 2009 but Mr Gray declined to participate, having conveyed to the Support Officer that he saw little point in doing so. It was agreed with Mr Myatt that matters would be decided on the papers. He has provided the Authority with a sworn affidavit and supporting documents. The Authority forwarded the affidavit to Mr Gray for his response but the document was returned to the Authority unopened.

[5] The current (11 November 2009) information on the Companies Office website shows that the company is still registered and there is nothing to suggest that it is in receivership. I am satisfied that it is appropriate to determine this matter pursuant to Clause 12 of Schedule 2 to the Employment Relations Act 2000.

Background

[6] Mr Brown was employed by Workmates from 17th September 2007 to 20 October 2008. Mr Packer was employed from 30th April 2008 to November 2008. When their employment came to an end, they did not receive their accrued annual holiday pay. Both approached their employer seeking payment but were unsuccessful. On 22nd January 2009, Mr Packer complained to the Labour Inspector and a complaint was received by the Labour Inspector from Mr Brown on 20th February 2009.

[7] The evidence of the Labour Inspector is that on behalf of Mr Packer, he contacted Mr Gray on 27th January 2009. Mr Gray acknowledged liability for the holiday pay claimed but stated that the company was unable to pay because of a lack of funds. The Labour Inspector wrote to Mr Gray on the same day confirming that he was investigating Mr Packer's complaint and requested that the company produce its wage, time and holiday records. On 3rd March 2009, the Labour Inspector repeated the same process for Mr Brown. There was no response from the company.

[8] In letters dated 19th May 2009, the Labour Inspector informed Workmates (Mr Gray) that he had completed his investigation into the complaints of Messrs Packer and Brown and was satisfied that Mr Packer had holiday pay arrears of \$4,622.40 and

Mr Brown was owed \$2,272.00. Schedules setting out the Labour Inspector's calculations were provided.

[9] Further letters were sent to Workmates by the Labour Inspector on 8th June 2009 (Mr Brown) and 11th June 2009 (Mr Packer) informing of an intention to issue demand notices for the respective monies owed. Demand notices were personally served on Workmates by the Labour Inspector on 19th June 2009. The sums claimed remained unpaid. Workmates was notified by the Labour Inspector on 21st July 2009 that proceedings had been commenced with the Authority and that orders seeking compliance with the demand notices were being sought.

Determination

[10] I accept that it more probable than not that Workmates Limited is in financial difficulties and has been for or some time. I also accept that this is the reason why Mr Packer and Mr Brown have not been paid the annual holiday pay due to them. Unfortunately, there is no evidence before the Authority as to the current financial status of the company but it remains registered without any obvious restrictions recorded against it by the Companies Office.

[11] I am satisfied from the evidence produced by the Labour Inspector, that Messrs Packer and Brown are entitled to the monies claimed on their behalf. Pursuant to s.137(1)(a)(iv) and s.225(4) of the Employment Relations Act 2000, I make the following orders:

1. Within 21 days of the date of this determination, Workmates Limited is ordered to pay to the Labour Inspector, for the use of Mr Ronald Packer, the gross sum of \$4,622.40 as identified in the demand notice dated 19th June 2009.
2. Within 21 days of the date of this determination, Workmates Limited is ordered to pay to the Labour Inspector, for the use of Mr Ronald Brown, the gross sum of \$2,272.00 as identified in the demand notice dated 19th June 2009.

Costs

[12] Within 21 days of the date of this determination, Workmates Limited is ordered to pay to the Labour Inspector the sum of \$140.00 being the application fees paid to the Employment Relations Authority.

K J Anderson
Member of the Employment Relations Authority