

Background

[4] The relevant sections of the Holidays Act 2003 (“the Act”) are s 48, which sets out two possible scenarios with respect to the payment for public holidays, and s 12, which sets out the factors to be considered in determining whether a day would otherwise be a working day for an employee.

[5] Section 48(1) sets out the payment required for public holidays for employees who do not usually work on the day on which a public holiday falls. Section 48(2) sets out the payment for public holidays for employees who do usually work on the day on which the public holiday falls.

[6] The factors listed in the Act, and which must be considered when determining what would otherwise be a working day are:

- The employment agreement;
- The employees work patterns;
- Any other relevant factors, including-
- Whether the employee works for the employer only when work is available;
- The employer’s rosters or other similar systems;
- The reasonable expectations of the employer and the employee that the employee would work on the day concerned.

[7] Mr Alan Blyth, the sole owner and Director of Northridge advised the Labour Inspector that Ms Sharma was employed on a casual arrangement, and contended that payment for Monday 1 June 2009 falls under s 48(1). There is no written employment agreement setting out the terms and conditions of employment.

[8] In order to establish whether Northridge had liability for the payment of the day in lieu, the Labour Inspector wrote to Northridge on 20 October 2009 seeking copies of the wage and time records. These were not forthcoming, however, Ms Sharma provided copies of the wages slips she had received from Northridge.

[9] After considering the documents provided by Ms Sharma the Labour Inspector concluded her work pattern showed that, with the exception of one day which was a pre-arranged day off, Ms Sharma always worked on a Monday and therefore 1 June 2009 was otherwise a working day for Ms Sharma.

[10] The Labour Inspector sent three letters to Northridge seeking payment of the outstanding holiday pay and setting out the factual and statutory basis for the claim. In response Mr Blyth emailed the Labour Inspector expressing his total rejection of the payment claimed on behalf of Ms Sharma.

[11] On 12 January 2010 the Labour Inspector served a demand notice on Northridge demanding payment for the outstanding holiday pay. On 4 February 2010 Northridge lodged its objection to the demand notice. A conference call was arranged by the Authority to discuss with the Applicant and the Labour Inspector a suitable date for the investigation meeting into the objection. The telephone number provided by the Applicant for the conference call was not answered and instead went to a fax line.

[12] By minute dated 29 April 2010 the Authority set the matter down for an investigation meeting to take place on 7 May 2010. The Authority is satisfied the Notice of Investigation meeting was served on the Applicant.

[13] There was no appearance from the Applicant at the investigation meeting. The Authority has been advised that Mr Blyth is away and will not be returning until Monday 10 May 2010.

[14] In the absence of the Applicant, and pursuant to s 226 I have considered whether or not the holiday pay specified in the demand notice is due.

Determination

[15] Upon reviewing all the evidence and the information provided to the Authority, I find Ms Sharma is owed holiday. The objection to the demand notice fails.

[16] Accordingly, the demand of the Inspector now becomes the order of the Authority. Under s 226 of the Act, Northridge Chemists Limited shall pay to Priya Sharma holiday pay owed under the Holidays Act 2003 in the sum of \$297.50. I order payment to be made by the employer to Ms Sharma within 28 days of the date of this determination.

Vicki Campbell
Member of Employment Relations Authority