

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2019] NZERA 599  
3055558

BETWEEN                      JESSE WILLIAM PAUL  
Applicant

AND                              BARRY JON RAKENA  
Respondent

Member of Authority:        Helen Doyle

Representatives:              Applicant in person  
No appearance from respondent

Investigation Meeting:       14 October 2019

Date of Determination:       18 October 2019

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**DETERMINATION OF THE AUTHORITY**

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**A       Barry Jon Rakena is ordered to pay to Jesse William Paul the sum of  
\$16,484.16 gross being holiday pay.**

**Employment Relationship Problem**

[1]       In a determination dated 13 September 2019<sup>1</sup> the Authority granted leave to Jesse Paul to recover his holiday pay from Barry Rakena under s 142Y of the Employment Relations Act 2000 (the Act).

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<sup>1</sup>       *Jesse William Paul v B J Rakena Builders Limited and Barry Jon Rakena* [2019] NZERA 533.

[2] An investigation meeting to hear the claim against Mr Rakena under s 142Y of the Act was scheduled for 14 October 2019.

[3] The Authority is satisfied from the affidavit of a process server that Mr Rakena was served on 24 September 2019 with the notice of investigation meeting and the determination granting leave to Mr Paul to bring a claim against him.

[4] The affidavit of service deposes that Mr Rakena acknowledged his identity and accepted the documents by hand.

[5] On 14 October 2019 Mr Rakena was not present at the commencement time for the investigation meeting. The Authority therefore delayed the commencement of its investigation meeting in the event that Mr Rakena was running late.

[6] After about ten minutes there was still no appearance by Mr Rakena and no explanation or good cause advanced for his non-appearance. In the circumstances the Authority proceeded under clause 12 of the second schedule of the Act to undertake its investigation and hear evidence from Mr Paul.

**Has there been a default in the payment of holiday pay?**

[7] Mr Paul's employment with B J Rakena Builders Limited ended in early September 2018. He was owed a considerable amount of holiday pay and lodged a statement of problem with the Authority in March 2019. After a telephone conference with the Authority, Mr Paul and Mr Rakena, a determination was issued that ordered payment by B J Rakena Builders Limited of \$16,484.15 for 69.75 days of unpaid annual leave and alternative days entitlements.<sup>2</sup> There was no disagreement by Mr Rakena that holiday pay was owed to Mr Paul.

[8] Payment of the holiday pay was not made to Mr Paul. He returned to the Authority seeking a compliance order with the earlier determination. After a brief investigation meeting an order was made on 17 July 2019 that B J Rakena Builders Limited comply with the orders

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<sup>2</sup> [2019] NZERA 233

in the earlier determination and pay Mr Paul the sum of \$16,484.15 gross being holiday pay within 14 days of 17 July 2019.<sup>3</sup>

[9] Mr Paul did not receive any payment of holiday pay owing to him from B J Rakena Builders Limited. The Authority granted leave to recover the holiday pay from Mr Rakena after a further short investigation meeting.<sup>4</sup>

[10] Mr Paul confirmed in his evidence at the investigation meeting on 14 October 2019 that he still has not been paid his holiday pay or any portion thereof owed to him by B J Rakena Builders Limited. He wishes to recover his holiday pay from Mr Rakena.

[11] I am satisfied that there has been a default in the payment of the holiday pay to Mr Paul from the time his employment ceased on 7 September 2018. There was continued default with the orders of the Authority on 17 April 2019 and 17 July 2019 that B J Rakena Builders Limited pay holiday pay in the sum of \$16,484.15 gross to Mr Paul. No payment has been made towards the holiday pay owing as at 14 October 2019.

#### **Is B J Rakena Builders Limited unable to pay the holiday pay owing?**

[12] Mr Rakena advised the Authority that B J Rakena Builders Limited was in a poor financial state and that it owed money to the Inland Revenue Department during the telephone conference on 9 April 2019 with the Authority. He stated that the company was close to ceasing trading. That telephone conference was the only time that Mr Rakena participated in the Authority process. Although the company is still on the Companies Register I am satisfied that there are reasonable grounds for concluding that B J Rakena Builders Limited does not have sufficient assets to pay the holiday pay owing.

#### **Is the default due to a breach of employment standards?**

[13] Employment standards are defined in s 5 of the Act. They include the minimum entitlements and payment for those under the Holidays Act 2003.

[14] I am satisfied that the default in this case is due to a breach of employment standards because it concerns minimum entitlements and payment of those under the Holidays Act 2003.

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<sup>3</sup> [2019] NZERA 422

<sup>4</sup> [2019] NZERA 533

**Is Mr Rakena a person involved in the breach within the meaning of s142W of the Act?**

[15] Section 142W of the Act defines a person who is involved in a breach. Mr Rakena is the sole director of B J Rakena Builders Limited. Mr Paul stated in his evidence that Mr Rakena undertook all the necessary paper work for the company to carry on its business. That included attending to payment of wages and other money to the employees of B J Rakena Builders Limited.

[16] I am satisfied that Mr Rakena, as the sole director of B J Rakena Builders Limited, is a person involved in the breach of failing to pay minimum entitlements under the Holidays Act 2003 to Mr Paul within the meaning of s 142W of the Act. Under s 142W(1)(c) of the Act Mr Rakena, was directly or indirectly, knowingly concerned in, or party to, the breach.

**Conclusion**

[17] I am satisfied under s 142Y of the Act that the circumstances in which Mr Paul may recover holiday pay from Mr Rakena are satisfied and that it is appropriate to make an order against Mr Rakena that he pay to Mr Paul the holiday pay owing

**Order Made**

[18] I order Barry Jon Rakena to pay to Jesse William Paul the sum of \$16,484.15 gross being holiday pay.

Helen Doyle  
Member of the Employment Relations Authority