

were no claims identified in relation to either of them over which the Authority had jurisdiction.

[4] The Authority's preliminary jurisdiction determination³ identified three claims out of the range of issues identified by Mr Prins in his original Statement of Problem in respect of this matter over which the Authority had jurisdiction.

Issues

[5] The issues being investigated and determined today are allegations that JAE Sales:

- (a) Failed to provide Mr Prins with a written employment agreement;
- (b) Failed to keep accurate holiday and leave records; and
- (c) Failed to provide Mr Prins with access to his holiday and leave records upon request.

[6] Mr Prins also claims penalties for these alleged breaches. He further seeks that some or all of any penalties that maybe awarded be paid to him personally and not the Crown.

Claim 1 – no IEA

[7] JAE Sales admits it did not give Mr Prins a written employment agreement so this claim succeeds.

[8] Mr Prins' penalty claim for this breach does not succeed because s.65(4) of the Employment Relations Act 2000 (the Act) requires that a penalty action be brought by a Labour Inspector. Mr Prins is obviously not a Labour Inspector.

Claim 2 – Inaccurate holiday and leave records

[9] Mr Prins says that he disputes the holiday and leave records that were kept by Ms Anita Davis whilst she was doing the business records from mid-March 2008 to mid-2010. Mr Prins did not identify in what way the records were inaccurate, other than asserting that they were.

³ Supra.

[10] Mr Viall denies that JAE Sales failed to keep accurate holiday and leave records. He says that they wrote on a wall planner the dates that people were away from work. He says those records were passed to Ms Davis who compiled the information and then kept the records on her computer.

[11] Mr Viall told the Authority that Ms Davis' computer has broken and despite attempts to fix it the holiday and leave record information cannot be retrieved. Mr Viall says that Mr Prins has been provided with copy of the wall planner which records the holidays and leave staff took while the business was operating.

[12] Mr Prins bears the onus of establishing his claim on the balance of probabilities. I find that the lack of evidence presented by Mr Prins regarding alleged inaccuracies in the holiday and leave records means he has been unable to establish this claim to the required standard. Accordingly I find that this claim does not succeed.

Claim 3 – Failure to provide access to holiday and leave records

[13] I am satisfied that Mr Prins requested in accordance with s.82 of the Holidays Act 2000 (HA03) access to his holiday and leave records and that these were not provided by JAE Sales.

[14] Under s.83 of HA03 failure by an employer to provide access to holiday and leave records may result in the Authority accepting as proven (in the absence of evidence to the contrary) statements made by the employee about their annual holidays, public holidays, sick leave or bereavement leave taken or holiday pay or leave pay actually paid. This section was applied by the Authority in respect of its 2013 investigation into Mr Prins' wage arrears claim.⁴

[15] There is no separate remedy or penalty for failing to provide access to Mr Prins' holiday and leave records. Therefore Mr Prins' penalty claim does not succeed.

⁴ Ibid 1.

Costs

[16] I consider that each party has had a measure of success so it is appropriate for costs to lie where they fall.

Rachel Larmer
Member of the Employment Relations Authority