

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 66
5328893

BETWEEN SUSAN QUINN, LABOUR
 INSPECTOR
 Applicant

AND BBQ DUCK CAFÉ LIMITED
 Respondent

Member of Authority: Robin Arthur

Representatives: Applicant in person
 No appearance for Respondent

Investigation Meeting: 18 February 2011

Determination: 18 February 2011

DETERMINATION OF THE AUTHORITY

- A. BBQ Duck Café Limited is to pay the Labour Inspector the following sums (for the benefit of its former employee Tian You Li):**
- (i) \$223.13 for wages; and**
 - (ii) \$17.85 for holiday pay;**
 - (iii) interest on those two amounts, at the rate of 5.17 per cent, from 3 December 2010 to the date of payment.**
- B. BBQ Duck Café Limited is to pay to the Labour Inspector (for transfer to the Crown Account):**
- (i) a penalty of \$1000 for failing to keep and produce, when required, wage, time and holiday records; and**
 - (ii) a further penalty of \$1000 for failing to pay statutory entitlements to Mr Li.**

**C. BBQ Duck Café Limited is to reimburse the Labour Inspector
\$71.56 for the fee to lodge this action in the Authority.**

Employment Relationship Problem

[1] The Labour Inspector sought orders for the payment of wages and holiday pay owed to Tian You Li for work while he was employed at a restaurant operated by BBQ Duck Café Limited (the company).

[2] Company representative Bing Young did not attend the investigation meeting notified to consider the application. He had advised the Authority by email that he would be out of the country at the time of the hearing and wanted the hearing rescheduled. However he also stated that his reply was self-explanatory and suggested the Authority need not waste time and money inquiring further. He said nothing on why he could not make any arrangements for the company to be represented at the investigation meeting. In those circumstances I have proceeded to determine the matter.

[3] I am satisfied on the basis of the Inspector's sworn evidence that she began inquiries on this matter in July 2010 in response to a complaint from Mr Li. By December 2010 it had not been resolved and she lodged an application in the Authority. In the intervening five months she has spoken to and written to Mr Young about the claim. She requested time and wage records but these were not provided. She spoke with the company's accountant who said money owed to Mr Li would not be paid until he provided an IRD number. The Inspector advised that the Department of Labour would take responsibility for any tax owed. Mr Li had no written employment agreement and the company had no tax records for him.

[4] The Inspector sent an opinion letter to the company, with a schedule of amounts owed to Mr Li. As a result of comments from Mr Young, the Inspector checked with Mr Li about the details of meal breaks taken and then amended the schedule of amounts due to him. She received no reply from the company to the revised schedule.

[5] The company's statement in reply described the facts set out in the Inspector's

statement of problem as “*true*” but disputed whether some of the hours claimed were worked. It stated the company agreed with the Inspector’s application “*but at the moment have no money to pay*”.

[6] I am satisfied the Inspector’s evidence confirms the money claimed for wages and holidays is due to Mr Li and the company failed to provide records when lawfully required to do so. The grounds for the orders and penalties sought have been made out.

[7] BBQ Duck Care Limited must pay the amounts set out at in orders labelled A, B, C and D at the beginning of this determination. This includes an order for interest at the rate of 5.17%, which is the 90-day-bill rate as of today’s date plus two per cent.

Robin Arthur
Member of the Employment Relations Authority