

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN James Wilson - Labour Inspector (Applicant)

AND Dey Street Management Ltd (Respondent)

REPRESENTATIVES Mark Horn (for Applicant)
No appearance for Respondent

MEMBER OF AUTHORITY Janet Scott

DATE OF DETERMINATION 8 November 2006

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Labour Inspector seeks to recover arrears of holiday pay owed to two former employees of Dey Street Management Limited (Kathryn O'Brien and Dana O'Brien). The Labour Inspector also seeks interest, a penalty and costs in the matter.

[2] There was no appearance at the investigation meeting by or on behalf of the respondent. The Authority has been provided with proof of service attesting to the fact the respondent has been served with the Notice of Investigation Meeting.

[3] The meeting was delayed to allow for the situation that the respondent had been unavoidably detained. However as there was no appearance for nor contact from the respondent to explain its absence, I have proceeded to hear and determine the matter in accordance with clause 12 of the 2nd Schedule of the Employment Relations Act 2000.

Evidence

[4] Kathryn O'Brien and Dana O'Brien are a mother and daughter team who work as manager and assistant manager running hostel accommodation owned by the respondent. Among the tasks undertaken by them was payroll preparation and the maintenance of wage and time records.

[5] On 6 January 2006 the two women were made redundant after the business was sold. Prior to leaving their employment they noted the sums owed to them as outstanding holiday pay. The wage and time records were handed to Mr Vincent (sole director of the respondent company) prior to their departure from the accommodation they enjoyed as part of their employment package.

[6] At the time of their departure the O'Briens were advised that outstanding pay and holiday pay would be paid to them. The wages have been paid but despite strenuous efforts made on their behalf they have not received their holiday pay.

[7] The Labour Inspector now seeks to recover holiday pay owed on their behalf.

[8] The sums sought are:

- Kathryn O'Brien \$5,732.51 gross
- Dana O'Brien \$2,561.56 gross

[9] An email to the Labour Inspector who commenced this action originally was introduced into evidence. This email – from Mr Vincent for the respondent (dated 6 March 2006) – states that the respondent does not dispute holiday pay is owed. Neither is the quantum disputed.

Determination

[10] I am satisfied that the sums claimed by the Labour Inspector on behalf of Kathryn O'Brien and Dana O'Brien are owed to them by the respondent.

[11] *I direct the respondent to pay to the Labour Inspector the sum of \$5,732.51 gross for the use of Kathryn O'Brien.*

[12] *I direct the respondent to pay to the Labour Inspector the sum of \$2,561.56 gross for the use of Dana O'Brien.*

[13] *I further direct that the respondent is to pay interest on the above sums at the rate of 8.5% from 12 January 2006 until payment is made pursuant to this determination.*

[14] I make no order in respect to the claim for a penalty.

Costs

[15] *The respondent is direct to pay costs to the Labour Inspector in the sum of \$70 to reimburse him for the cost of the filing fee incurred in bringing this application.*

Janet Scott
Member of Employment Relations Authority