

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Rama Yeleswaram, Labour Inspector (Applicant)

AND Brentor Holdings Limited (Respondent)

REPRESENTATIVES Rama Yeleswaram In person
No appearance for Respondent

MEMBER OF AUTHORITY Janet Scott

INVESTIGATION MEETING 15 September 2005

DATE OF DETERMINATION 23 September 2005

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

The Labour Inspector seeks an order directing the respondent to compliance with my Determination in AA 89/05.

There was no appearance at the investigation meeting by or on behalf of the respondent. I am satisfied the respondent has been served with the Statement of Problem and Notice of Investigation Meeting.

The meeting was delayed to allow for the situation that the respondent had been unavoidably detained. However, as there was neither an 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 Second Schedule of the Employment Relations Act 2000.

On 9 March 2005 I made the following orders in relation to a claim for recovery of arrears of holiday pay for the use of Thomas Coates;

- To the Labour Inspector for the use of the worker \$3,728.41 gross being arrears of holiday pay (for annual holidays and lieu days) owed to him. From the net sum (after PAYE) the employer is entitled to deduct \$500 being repayment of a loan to the worker.
- To the Labour Inspector costs in the sum of \$500 net.
- To the Employment Relations Authority \$1000 as a penalty for failure to keep the wage and time record required to be kept pursuant to s.130 of the Employment Relations Act 2000.

Application for a Compliance Order

The Labour Inspector gave evidence that the sums awarded have not been paid as directed. She now seeks to enforce the orders and seeks a Compliance Order pursuant to s.137 of the Act.

The Labour Inspector detailed the strenuous efforts made by her to encourage the respondent to comply with the Authority's original determination. She has been told the business is no longer trading, the final accounts have been settled and there is no money to pay Mr Coates.

I note that as of the date of hearing the company remains on the Company Register

Determination

I am satisfied there has been no payment to the Labour Inspector or the Employment Relations Authority in terms of the orders made and that a compliance order is warranted.

Pursuant to s.137 of the Act I direct the respondent to comply immediately with the original orders. Following advice from IRD, the gross sum payable to the Labour Inspector for holiday pay is now expressed as a net sum. This is to simplify the direction and to facilitate recovery. The respondent is to pay the following sums as detailed below:

- **To the Labour Inspector for the use of the worker \$2,457.34 net being arrears of holiday pay (for annual holidays and lieu days) owed to him. From the net sum (after PAYE) the employer is entitled to deduct \$500 being repayment of a loan to the worker. The total sum payable to the Labour Inspector under this head is therefore \$1,957.34 net.**
- **To the Labour Inspector costs in the sum of \$500 net.**
- **To the Employment Relations Authority \$1000 as a penalty for failure to keep the wage and time record required to be kept pursuant to s.130 of the Employment Relations Act 2000.**

In addition the respondent is to pay to the Labour Inspector the sum of **\$70.00 net** to reimburse her for the filing fee incurred by her in referring the matter back to the Authority.

In addition pursuant to Cl. 11 of the Second Schedule to the Act Power to Award Interest **I order that interest at the rate of 9% per annum is payable on the sum awarded as arrears of holiday pay (\$1,957.34) from the date of this determination until the date the order is satisfied.**

The respondent is now reminded of the consequences of a failure to comply with any compliance order that may in future need to be issued by the Employment Court. Pursuant to s.140 of the Act the Court may (if it is satisfied there has been non compliance):

- Order that the person in default be sentenced to imprisonment for a term not exceeding 3 months.
- Order that the person in default be fined a sum not exceeding \$40,000.

- Order that the property of the person in default be sequestered.

Janet Scott
Member of Employment Relations Authority