

[2] Ms Yeleswaram claims interest on these sums pursuant to Clause 11 of the Second Schedule to the Employment Relations Act 2000. In addition, pursuant to section 229 of the Employment Relations Act 2000 she seeks penalties against Mr Whisker of \$5,000.00 for each of two alleged breaches: the failure to keep wage and time records and the failure to make payment, upon request, of what was owed. Finally Ms Yelaswaram seeks costs for the recovery of the filing fee.

Issues

[3] There is no dispute from Mr Whisker that he personally employed Ms Ying Tang or that he owes her \$2,361.60. He told me that the only issue (from his side) is his ability to pay. He told me that he was in the business of selling commercial real estate and that he terminated Ms Ying Tang's employment because he found he was not making sufficient sales to cover her wages. There is also no dispute that he did not provide wage and time records to the Labour Inspector when requested to do so.

[4] There is no issue, therefore, that arrears are payable to Ms Ying Tang or about the quantum owed. The issues remaining for determination are whether interest should be ordered for inclusion in the sum for which judgement is given, and whether Mr Whisker should pay penalties for the alleged breaches.

Determination

[5] Mr Whisker told me that Ms Ying Tang was the first person he had ever employed. He explained that his failure to keep and provide wage and time records was initially the result of his ignorance and later, he said, because Ms Ying Tang was reluctant to sign records that he had prepared. Ms Ying Tang agreed that after her employment ended she met with Mr Whisker and was asked to sign records however she declined to do so because she wished to check with "*Work and Income*" (which had placed her in Mr Whisker's employment) as to whether this was appropriate.

[6] Mr Whisker confirmed that he is not bankrupt but said he remains unable to make payment of what he owes in full at this stage. He told me that he would be prepared to discuss arrangements to pay in instalments.

[7] Ms Yelaswaram told me that her experience (at least up until now) has been that Mr Whisker has not responded to attempts she has made to discuss such arrangements with him.

[8] It was not in dispute that Mr Whisker made some efforts to rectify the inadequacies in his record keeping. This attempt, coupled with his initial ignorance of his responsibilities as an employer, has persuaded me that a penalty is inappropriate in respect of the failure to keep wage and time records.

[9] I do however accept that a penalty is appropriate in respect of the ongoing failure to make any attempt to pay Ms Ying Tang (even in part.) The payments to Ms Ying Tang have been outstanding for almost eighteen months during which time Mr Whisker has not taken any responsibility for addressing the issue. In the six months since proceedings were lodged here he has not responded to communications from the Authority. Even allowing for any financial difficulties Mr Whisker may have been in, this is not acceptable. It seems clear that Mr Whisker has been ignoring the problem. I therefore impose a penalty of \$500.00 for the failure to pay minimum wages and holiday pay.

[10] This penalty is not however to be applied to the use of Ms Ying Tang. Although she has been denied the use of her money for an extended period that is a matter to be remedied by an order for interest. The Authority may order interest in any matter involving the recovery of money, at a rate not exceeding the 90-day bill rate plus 2%. I therefore conclude that interest should be paid on the sums owed at the rate of 4% per annum.

[11] Finally I accept that the Labour Inspector is entitled to recover costs being the fee of \$70.00 for filing in the Authority.

Summary of orders:

[12] The respondent, Jon Whisker, is ordered to pay to the applicant Labour Inspector

- i. To the use of Ms Ying Tang, \$2,361.60 gross wages and holiday pay, plus 4% interest per annum on the balance

outstanding from 17 September 2008 until the date of payment,
and

- ii. Costs of \$70.00 in reimbursement of the filing fee.

[13] Mr Whisker is also ordered to pay a penalty of \$500.00 to the Authority.

Yvonne Oldfield

Member of the Employment Relations Authority