

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Lynn Dellow, Labour Inspector (Applicant)

AND Peter Sugrue trading as Vivo Pizzeria and Bar (First Respondent)
AND Neweden Trust Limited (Second Respondent)

REPRESENTATIVES Lynn Dellow In person
No appearance for First Respondent
No appearance for Second Respondent

MEMBER OF AUTHORITY Dzintra King

INVESTIGATION MEETING 20 June 2005

DATE OF DETERMINATION 20 June 2005

DETERMINATION OF THE AUTHORITY

Ms Justina Cook was employed as manageress by Mr Peter Sugrue trading as Vivo Pizzeria and Bar. The Labour Inspector's enquiries revealed that PAYE had been paid through Neweden Trust Limited but Ms Cook had no knowledge of this company at the time of employment. She was not provided with an employment agreement. The employer is Peter Sugrue trading as Vivo Pizzeria and Bar.

When Ms Cook resigned she was not paid her holiday pay. Despite letters and visits from the Labour Inspector Mr Sugrue did not produce time and wages records and the holiday book. The respondent has not provided a Statement in Reply and did not appear at the Investigation Meeting. There is a clear pattern of failure to deal responsibly and legally with this issue.

Section 75 Holidays Act 2003 provides that where an employer does not pay holiday pay the employer is liable to a penalty for non compliance.

Despite requests by the Labour Inspector Mr Sugrue failed to produce the time and wages records and holiday book. A notice was sent on 16 March 2005 by the Labour Inspector requiring the production for her inspection of the all relevant records. This was not complied with. This is a breach of s.229 (1) (c) (i) Employment Contracts Act 2000. Section 229 (2) requires that an employer comply forthwith with a request for the time and wages record and holiday book. Failure to do so renders the employer liable to the imposition of a penalty pursuant to s.229 (3).

The First Respondent is to pay:

- \$904.20 holiday pay;

- Interest on the above amount at the rate of 7.5%, the interest to run from the date of termination of employment, being 8 October 2004, until such time as the holiday pay is paid in full;
- A penalty of \$4,000 pursuant to s.75 of the Holidays Act 2003. Of this sum \$1,000 is to be paid to the applicant for the benefit of Ms Cook and \$3,000 to the Authority and then into the Crown Bank Account;
- A penalty of \$4,000 pursuant to s.229 (3) Employment Relations Act 2000. Of this sum \$1,000 is to be paid to the applicant for the benefit of Ms Cook and \$3,000 to the Authority and then into the Crown Bank Account;
- The filing fee of \$70.

Dzintra King
Member of Employment Relations Authority