

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Lynn Booker, Labour Inspector (Applicant)

AND Brett Storey t/a The Alteration Shop
(Respondent)

REPRESENTATIVES Applicant in person
No appearance for respondent

MEMBER OF AUTHORITY Robin Arthur

INVESTIGATION MEETING 9 August 2006

DATE OF DETERMINATION 10 August 2006

DETERMINATION OF THE AUTHORITY

[1] By determination AA 106/06 the Authority ordered the respondent to pay to the Labour Inspector, for the benefit of the respondent's former employee Thomas Tai, the sum of \$2896.44 in outstanding holiday pay, public holiday pay and alternative holiday pay, and a further sum of \$256.98 in interest on that amount. The respondent was also ordered to reimburse the Labour Inspector's filing fee and pay a penalty of \$1200 for breaches of the Holidays Act 2003 and the Employment Relations Act 2000.

[2] The Labour Inspector says that Mr Storey has not paid the sums ordered be paid to her. She now seeks a compliance order and reimbursement of her filing fee for the compliance application.

[3] My inquiries confirm that Mr Storey has also not paid the penalty ordered be paid to the Employment Relations Authority to then be paid to the Crown bank account.

[4] Mr Storey did not attend today's investigation meeting at the appointed time. After waiting 20 minutes I had a Support Officer contact Mr Storey by telephone. The Support Officer reported to me that Mr Storey said he had written the meeting in his diary for tomorrow and could not attend today's meeting for at least another hour. I had the Support Officer advise Mr Storey that the meeting would proceed without him. The Support Officer reported to me that Mr Storey then told him that he was approaching his solicitor and would not be ready until tomorrow and would appeal any order made against him in any event.

[5] I am satisfied that Mr Storey was properly notified of the investigation meeting. I spoke with him by telephone conference on 20 July 2006 when the date was set and a notice of investigation meeting in the statutory form was issued and posted to him on 21 July. At the telephone conference Mr Storey told me he would be legally represented and I made provision for him to file any statements and documents before the meeting.

[6] I proceeded with the meeting by questioning the Inspector under oath. She told me that following the determination she contacted Mr Storey to seek payment. She checked that he had received a copy of the determination. He told her that he intended filing a challenge. She told him about the 28 days period to file a challenge and urged him to get legal advice. After the expiry of the 28-day period the Inspector checked with the Registrar of the Employment Court who advised that no challenge had been filed. She again contacted Mr Storey who said that he still intended challenging the determination. She told him that he would now also need to seek leave to challenge out-of-time and again encouraged him to seek legal advice. She asked Mr Storey to pay the amounts ordered but he was not prepared to do so. The Inspector subsequently applied for a compliance order.

[7] Mr Storey has filed a statement in reply to that application. He states his belief that the Inspector's original application regarding Mr Tai's holiday pay was dealt with unfairly. Having reviewed the file and the determination I consider his complaint unfounded. I held a telephone conference with the parties on 8 March 2006 where I referred to the prospect of orders being made at or after the meeting. Mr Storey complains he was not told that the investigation meeting was a "hearing". I am satisfied that Mr Storey was sent notices of the investigation meeting in the required statutory form on 8 March and he subsequently filed a statement in reply on 17 March in accordance with the timetable set in the phone conference.

[8] I also asked Mr Storey during the earlier investigation meeting on 24 March whether he had access to accounting and legal advice on running his business and he confirmed that he did. He had ample opportunity to take advice and arrange representation at that stage if he had wished to do so.

[9] Mr Storey also complains that he had no opportunity to question Mr Tai during the meeting. This is incorrect. He was given an opportunity to make any comments or submissions that he wished to. He accepted the Labour Inspector's report on amounts owed to Mr Tai. He accepted that he had time and wage records but had refused to provide them to the Inspector when requested. This was because of his view that he should not have to make any payments to Mr Tai because he considered that Mr Tai had left without giving him sufficient notice. Mr Tai had no written employment agreement and no express notice period.

[10] The Inspector's present application is not an opportunity for Mr Storey to 'have another go' or act as a de facto appeal. Mr Storey did not take the opportunity to file a challenge to the Authority's determination in the Employment Court, although he twice told the Inspector that he would. I have today had inquiries made of the Employment Court Registry as to whether Mr Storey has filed any challenge to determination AA 105/06. He has not. He must pay the amounts ordered.

[11] For more than 60 years New Zealand has had statutes requiring workers leaving a job to be paid the balance of holidays owed and requiring employers to keep books recording leave entitlements. Most of the many thousands of employers – from very large to quite small enterprises – take the care and properly meet the expense of meticulously complying with this system of minimum statutory entitlements. Mr Storey is not entitled to flout those laws at his own whim any more than he would be entitled to ignore traffic or tax laws. The orders made for payment by him were justified and his failure to pay is unlawful.

Compliance order

[12] Accordingly, under s137 of the Employment Relations Act 2000 ("the Act"), the respondent is ordered to comply with the orders made in the Authority's determination AA 106/06 within 28 days after the date of this determination.

[13] Mr Storey is further ordered to reimburse the Labour Inspector's filing fee on this application, that is \$70.

[14] I draw Mr Storey's attention to certain risks should he fail to comply with this order. Should such circumstances occur, the Labour Inspector may apply to the Employment Court under s137(6) of the Act for the exercise of its powers to order imprisonment up to three months, fines of up to \$40,000 and seizing of the property of any person who fails to comply with a compliance order made under s137.

Robin Arthur
Member of Employment Relations Authority