

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

*Under the Employment Relations Act 2000*

**BETWEEN** Rena Keightley (Labour Inspector) (First Applicant)  
Jameel Ur Rehman (Second Applicant)

**AND** Pakiwi Traders Limited t/a Tandoor Pakistani Cuisine (Respondent)

**REPRESENTATIVES** Rena Keightly and Jameel Ur Rehman in person  
Alex Hope for Respondent

**MEMBER OF AUTHORITY** Vicki Campbell

**INVESTIGATION MEETING** 11 September 2006

**SUBMISSIONS RECEIVED** 20 September from Applicant  
18 September from Respondent

**DATE OF DETERMINATION** 11 October 2006

DETERMINATION OF THE AUTHORITY

**Employment Relationship Problem**

[1] Mr Ur Rehman was recruited from Pakistan by Mr Javed Chaudhry, managing director, of Pakiwi Traders Limited t/a Tandoor Pakistani Cuisine (Pakiwi Traders) to come to New Zealand to work in his restaurant business as a chef. Mr Rehman was employed by Mr Chaudhry from May 2002 until 12 September 2005.

[2] The terms and conditions of employment were not recorded in a written employment agreement.

[3] Ms Rena Keightly, a Labour Inspector with the Department of Labour (DOL), claims Mr Jameel Ur Rehman is owed outstanding holiday pay and seeks payment of the holiday pay plus interest on the sum, a penalty and costs. In addition Mr Ur Rehman seeks payment of \$784.30 being unpaid wages for his last week of employment and \$241.90 for sick leave taken but not paid, in 2004.

[4] Mr Chaudhry does not deny the claims but counterclaims for damages against Mr Ur Rehman and says that due to other factors he should not have to pay the debt. Mr Chaudhry says Mr Ur Rehman breached his employment agreement when he left seeks damages as a

result of that breach. Mr Chaudhry says that as Mr Ur Rehman did not assert his right to payment at the time of his departure and/or that he made it impossible for the business to be able to pay the outstanding amount, Mr Ur Rehman has represented that he had no intention of exercising his legal right to the outstanding wages, and holiday pay.

[5] English is a second language for Mr Ur Rehman and during the investigation meeting the Authority undertook its enquiries with the assistance of an interpreter provided by DOL.

[6] There is no dispute that the amounts claimed by the Labour Inspector and Mr Ur Rehman have been correctly calculated and that liability exists. As the counterclaims of the respondent will have an impact on the final determination of the Labour Inspector's and Mr Ur Rehman's claims I have determined the counter-claim first.

### **Pakiwi Traders counter-claim**

[7] Pakiwi Traders counterclaims against Mr Ur Rehman, the sum of \$43,087.49 plus costs, alleging that it has suffered loss as a result of a breach by Mr Ur Rehman, of the employment agreement. Mr Chaudhry says Mr Ur Rehman was contractually bound to work for a fixed period of four years to March 2006 when his work permit expired. Mr Chaudhry claims Mr Ur Rehman left with insufficient notice and as a direct result his business suffered. He seeks damages for the loss of trade for the months of September 2005 to March 2006.

### Employment terms and conditions

[8] Mr Ur Rehman and his cousin Mr Muhammad Anwar were employed by the Respondent while still working in Pakistan. Mr Chaudhry paid for both men's airfare to New Zealand and provided accommodation for them. Mr Chaudhry says that it was initially agreed to pay the men \$9.00 per hour, but when he agreed to pay their airfares, it was also agreed that their rate would be \$8.00 per hour.

[9] While there is no written employment agreement, I accept that aspects of the agreement have been confirmed in writing. On 10 March 2002 Mr Ur Rehman signed a letter to Mr Chaudhry accepting a position as cook at Tandoor Pakistani Cuisine at the rate of \$8.00 per hour.

[10] In his written evidence Mr Chaudhry says he prepared a written offer of employment which included that Mr Ur Rehman was to be employed for a fixed term of one year with automatic extensions at the end of each year for up to four years. If the document exists, neither the applicant nor the respondent could produce it. At the investigation meeting Mr Chaudhry accepted that the purpose of the fixed term agreement and the date and reason for the expiry of the fixed term agreement had not been reduced to writing as required by s.66 of

the Employment Relations Act. He told me he was not aware that a fixed term agreement had to be in writing.

[11] Mr Ur Rehman worked 7 days a week and anything from 25 to 40 hours or more each week.

[12] Mr Ur Rehman says that the deal he and his cousin had reached with Mr Chaudhry initially, was that they would work for two years, until February 2004, after which time they would be free to find other jobs if they wished and become New Zealand residents.

[13] Mr Ur Rehman says Mr Chaudhry had also promised to help him apply for residency after the two years was completed.

[14] Parliament has expressly provided a regulated regime for those entering into fixed-term agreements. Section 66(4) of the Employment Relations Act requires an employment agreement to state, in writing, the way in which the employment will end and the reasons for ending the employment in that way. Section 66(6) provides an employee with the right to elect to treat the purported fixed-term as ineffective if the employment agreement is in contravention of s.66(4).

[15] In his submissions Mr Hope, on behalf of the respondent referred to details contained within the application for a work permit as forming part of the employment agreement. He submitted that the work permit sets out the period Mr Ur Rehman was to be working. The only document provided to the Authority is an application for a work permit Mr Ur Rehman completed on behalf of Mr Anwar in February 2004.

[16] There is nothing in the documentation provided to the Authority that would indicate that Mr Ur Rehman had agreed to be employed on a fixed term basis until March 2006. I am satisfied that Mr Ur Rehman's employment became ongoing during his employment, subject only to him being in receipt of a valid work permit. If I am wrong on that conclusion, I am satisfied Mr Ur Rehman was entitled to treat as ineffective, any purported fixed term as the respondent had not complied with the requirements of s.66(4).

#### Mr Anwar leaves his employment

[17] Mr Ur Rehman commenced his employment in the restaurant with his cousin Mr Anwar in May 2002. Mr Ur Rehman worked under the supervision of Mr Anwar and was trained by him.

[18] During 2002 Mr Ur Rehman and Mr Anwar were befriended by a Hamilton citizen, Ms Judith Griffiths. Ms Griffiths told me that Mr Ur Rehman and Mr Anwar were brought to her house by her boarder who acted as an interpreter for him. She says they had a major problem

with their employer, Mr Chaudhry, who they told her was holding their passports and bank cards, manipulating their wages and failing to send money to their families as promised. She says that both men were terrified of Mr Chaudhry. Ms Griffiths said Mr Chaudhry told them they must obey him or he would have them deported back to Pakistan in disgrace.

[19] Ms Griffiths told me that showers seemed to be infrequent as Mr Ur Rehman smelled strongly of stale cooking and curry. He also wore the same few clothes the entire time he worked for Mr Chaudhry.

[20] Mr Ur Rehman says he expected to receive a weekly living allowance with the balance of the money he earned going directly to his family in Pakistan. Once in New Zealand however, he found the allowance was erratic and too small. It was not set at a specific amount per week, but money was given to him to pay for some items as they needed replacing such as soap, a tooth brush, tooth paste etc.

[21] In July 2004 Mr Anwar left his employment and the flat he had been occupying with Mr Ur Rehman. He was assisted to settle in Auckland by Mr and Mrs Awaiz who belong to the Pakistani Association of New Zealand.

[22] On 20 July 2004 Mr Chaudhry wrote to the New Zealand Immigration Service (Immigration) and advised that Mr Anwar was a troublesome employee, but that he was an excellent cook. He informed Immigration that Mr Anwar was linked to a terrorist organisation. Mr Chaudhry advised that Mr Anwar was training Mr Ur Rehman at the restaurant and that he would be extending Mr Anwar's employment for five months only (from March) following which, he would repatriate Mr Anwar back to Pakistan in August 2004.

[23] On 3 August 2004 Mr Chaudhry wrote again to Immigration and advised that Mr Anwar had left his employment and that he had become violent and troublesome. Mr Chaudhry advised Immigration that on 26 July 2004 Mr Awaiz had driven to Hamilton and demanded Mr Anwar's passport. In his letter Mr Chaudhry set out allegations that Mr Anwar had been involved in some incidents which resulted in complaints being made to the police. Mr Chaudhry urged Immigration to send Mr Anwar back as soon as possible.

[24] On 6 September 2004 Mr Chaudhry wrote to the East Hamilton Policing Centre and advised that a Mr Shaid Azad had contacted him on 29 August 2004 and told him he [Mr Azad] was travelling to Hamilton to pick up Mr Anwar's passport and permit. Mr Chaudhry outlines the contents of the telephone discussion as follows:

*In our conversation, Mr Shaid Azad told me that he is on his way to Hamilton (close to Huntly) and that he wants to see me regarding Mr Muhammad Anwar. When I questioned what for, his reply was "for one, to pick up Mr Anwar's passport and visa from me". To which I replied "I won't be available to meet you today" (as I had an engagement somewhere else for the day). To this, he said he could make a trip to Hamilton with or without Mr Anwar anytime that may suit me.*

[25] On 15 November 2004 Mr Chaudhry wrote again to Immigration setting out further allegations that Mr Anwar had been involved in some incidents which resulted in more complaints being made to the police. Once again Mr Chaudhry urged Immigration to send Mr Anwar back at the earliest possible time.

[26] Mr Anwar has since been deported from New Zealand.

[27] From July 2004, after Mr Anwar left the restaurant, Mr Ur Rehman worked on his own in the kitchen at the restaurant, with some support from Mr Hassan Chaudhry (Mr Chaudhry's son). The restaurant was open for dinner seven days a week from 5.30pm until late, and for lunch six days per week from 12-2.00pm. Hassan told me that the menu in place between July 2004 and September 2005 was extensive with 60 items on the menu. He says that as each meal was prepared fresh for the customer, considerable preparation time was required outside of the restaurant's opening hours. That evidence is not supported by the information contained in the time sheets provided by Mr Chaudhry. The time sheets show that Mr Ur Rehman never worked at the restaurant outside its usual opening hours.

[28] On 25 June 2005 a letter of complaint was written on behalf of Mr Ur Rehman. The letter was written by Mr Awiaz. The letter contains allegations relating to the standard of accommodation provided to Mr Ur Rehman, that his passport was being held by his employer and raises concerns about the payment of wages. This complaint was investigated by the DOL and the claims resulting from that investigation are those being dealt with in this determination.

#### Accommodation

[29] At the investigation meeting there were various descriptions of the accommodation Mr Ur Rehman and Mr Anwar were required to reside in. Having reviewed all the evidence I am satisfied that the accommodation provided for Mr Ur Rehman and Mr Anwar was not as it was described by the applicant and his witnesses. At the investigation meeting Ms Griffiths accepted that she was relying on what she had been told by Mr Ur Rehman about his living conditions and that she had never checked it out.

[30] It was common ground that initially Mr Ur Rehman and Mr Anwar shared a sleepout and that they had access to the main house to use the bathroom and ablution facilities. After the family moved to larger accommodation, Mr Ur Rehman shared a room with Mr Chaudhry's son Hassan. Mr Anwar left the family provided accommodation for a short while and then returned. Initially Mr Anwar was sleeping in the lounge room, but then moved into the garage. I am satisfied that Mr Ur Rehman, on his own initiative moved into the internal garage with Mr Anwar for a period of time. During that time Mr Ur Rehman had access to the shower and

toilet contained within the house. In July 2004 Mr Ur Rehman moved into a flat in O'Neil Street, Hamilton. Mr Ur Rehman and Mr Anwar were noted as the tenants and signed the tenancy agreement. The bond for the flat was paid for by Pakiwi Traders Ltd. Mr Chaudhry had a key for the flat.

[31] I am satisfied that Mr Ur Rehman had little privacy from Mr Chaudhry's prying eyes. Hassan would often stay at the flat and it was not uncommon for Mr Chaudhry to arrive announced in the middle of the night.

[32] At the investigation meeting Mr Chaudhry acknowledged that he opened and read Mr Ur Rehman's mail. He told me this continued after Mr Ur Rehman moved into the flat. Mr Chaudhry told me he used his key to enter into Mr Ur Rehman's flat and search his personal items for letters and other things.

[33] I consider Mr Chaudhry's actions undermined the employment relationship and fell well short of meeting the good faith obligations imposed by the Act.

#### Terrorist links

[34] Mr Chaudhry justified his actions of searching Mr Ur Rehman's flat by telling me that Mr Anwar and Mr Ur Rehman were linked to Lashkar-a-taiba a terrorist organisation. He stated in his written evidence:

*...I felt it was important to know what ... they had lied to me about and what they were trying to hide from me. Also I did not want to make these sort of serious allegations without proper evidence. I began making efforts to gather information on Mr Ur Rehman and Mr Anwar. I understood that doing this may encroach on their privacy but I felt that the risk of not doing so outweighed this.*

[35] I consider Mr Chaudhry's evidence to be self serving. If Mr Chaudhry genuinely believed both Mr Ur Rehman and Mr Anwar were involved in such activities then his correspondence to Immigration in 2004 did not make this clear. At that time it was only Mr Anwar he raised concerns about. It seems significant to me that those concerns only became important to him at the time Mr Anwar left his employment. He made no mention whatsoever of any concerns relating to any involvement by Mr Ur Rehman.

[36] Indeed it wasn't until after the first meeting with the Labour Inspector on 23 August 2005 that Mr Chaudhry made any allegations pertaining to Mr Ur Rehman. Mr Chaudhry wrote to Immigration on 30 August 2005 advising that he had decided not to retain Mr Ur Rehman beyond the expiry of his work visa and therefore would not request an extension for him.

[37] Mr Chaudhry followed this letter with another dated 5 September 2005 advising the Special Investigations Unit that Mr Ur Rehman had links to a terrorist organisation and that he was a potential risk for "National Security".

[38] Ms Keightly told me that Mr Chaudhry advised her on 12 September 2005 of his belief that Mr Ur Rehman had links to a terrorist organisation and that he had known this for three years. When she asked him why he had not informed the authorities before this, Ms Keightly says Mr Chaudhry told her he needed him to cook in his restaurant.

[39] On 19 September 2005 Ms Keightly received a telephone call from a Detective Simon Williamson from the Auckland Special Investigations Group who informed her that Mr Chaudhry had made a complaint to the police that Mr Ur Rehman was a terrorist and that he was required to undertake an investigation into the matter.

[40] I find Mr Chaudhry was quite content to put his concerns about Mr Anwar and Mr Ur Rehman to one side while it suited him. However, as soon as Mr Ur Rehman began asserting his rights under New Zealand employment laws, Mr Chaudhry took steps to remove him from his business. Of course it did not suit Mr Chaudhry to have Immigration suspend the work permit immediately, as he knew it would take some time to find a replacement in Pakistan. Instead he advised Immigration that he would not seek to extend the work permit beyond March 2006. This would allow Mr Chaudhry enough time to find a replacement chef and he had already made plans to travel to Pakistan in November for his son's wedding.

#### Passport

[41] Ms Keightly and a colleague attended the restaurant on 7 September 2005 where Mr Ur Rehman was on his own. Ms Keightly says he appeared visibly upset and was shaking and gesturing with his hands and sought her help. Ms Keightly says that when she enquired as to the whereabouts of his passport Mr Ur Rehman told her Mr Chaudhry had it.

[42] Mr Chaudhry denied holding onto Mr Ur Rehman's passport. It was only after Mr Ur Rehman had left his employment and consequently his lodging, in September 2005, when the police, on Mr Chaudhry's advice, inspected the O'Neil Street flat, and Mr Ur Rehman's passport was found. Mr Chaudhry of course, had full access to the flat as he had his own key. It is more likely than not that if Mr Ur Rehman had possession of his passport, he would have taken it with him when he left.

[43] The claim that Mr Chaudhry held onto the passport is also consistent with Mr Anwar's situation where two men connected to the Pakistani Association, on two separate occasions travelled to Hamilton to uplift Mr Anwar's passport from Mr Chaudhry.

[44] I am satisfied that it is more likely than not that Mr Chaudhry had possession of Mr Ur Rehman's passport.

Notice

[45] In the absence of an express term in a written agreement, there is an implied term that both parties will give reasonable notice of termination of the agreement. Reasonable notice is a mixed question of fact and law (*Kitchen Pak Distributions Ltd v Stoks* [1993] 2 ERNZ 401).

[46] There was no evidence that the parties had ever expressly reached agreement as to the length of notice required. Mr Chaudhry gave evidence that when he first employed Mr Ur Rehman he advised Mr Ur Rehman that 6 months notice would be required. Mr Ur Rehman denies this.

[47] Mr Hope submitted that in this case reasonable notice should be found to be six months. He further submitted that if a shorter period of notice had been given the respondent would have been able to train another person in the basics of the position or to make other arrangements to cover the position until a permanent replacement could be found.

[48] Mr Ur Rehman told the Authority that he was unable to give any notice to leave his position because his working conditions were so poor and he felt he had been treated as a slave. In effect, Mr Ur Rehman is saying his employer made it untenable for him to remain in employment and therefore he was justified in leaving without giving notice.

[49] The following actions and breaches are directly attributable to Pakiwi Traders:

- Breach of ss.65 & 66 of the Employment Relations Act;
- Breaches of the Holidays Act in not granting Mr Ur Rehman sick leave or holidays on pay;
- Possession of Mr Ur Rehman's passport without any valid explanation or excuse;
- Search of Mr Ur Rehman's personal belongings in his flat and the reading of personal mail and diaries;
- Notification to Immigration of the intent not to continue Mr Ur Rehman's employment without discussion with Mr Ur Rehman, together with the notification of serious allegations against Mr Ur Rehman after Mr Ur Rehman sought the assistance of DOL to enforce his minimum employment rights.

[50] I am satisfied that Mr Ur Rehman was aware that Mr Chaudhry had contacted Immigration. Mr Ur Rehman was aware that Mr Chaudhry had played a role in the deportation of his cousin. I have no doubt that Mr Ur Rehman was fearful of what Mr Chaudhry would do to him now that he, himself had requested the assistance of the authorities in his holiday pay issues.

[51] Looked at objectively and in all the circumstances, the respondent's actions were sufficiently serious to warrant Mr Ur Rehman's leaving his employment as he did. Mr Ur Rehman was entitled to treat the actions of his employer as repudiatory. He was therefore entitled to treat the contract as being at an end.

[52] Pakiwi Traders counterclaim against Mr Ur Rehman has failed.

### Estoppel

[53] A final issue to be determined in relation to the respondent's counterclaim is whether or not Mr Ur Rehman is estopped from succeeding in his claims. This estoppel is said to arise from Mr Ur Rehman's failure to advise Mr Chaudhry that he was leaving his employment which denied Mr Chaudhry the opportunity to arrange to pay the outstanding wages and holiday pay.

[54] The respondent submits that Mr Ur Rehman failed to request payment of his holiday pay or unpaid wages when he had the opportunity to do so when leaving his employment. He submits that having failed to assert the legal right at that point, he has represented to the respondent that he no longer intends to exercise his right to the payment.

[55] It was submitted further that Mr Ur Rehman had denied Pakiwi Traders the opportunity to pay him the outstanding amounts as he had left his employment without providing an opportunity for Mr Chaudhry to replace him and therefore the business could not make an income. He submits that it was Mr Ur Rehman's actions which put the company into the position that it could not pay his entitlements.

[56] In relation to the first submission, the Act provides for actions relating to employment relationship problems which are not personal grievances to be taken for a period of up to six years (s.142) following the event. Mr Ur Rehman had put his arrears claim, including the payment of outstanding holiday pay, wages and sick leave, in the hands of a Labour Inspector. The Labour Inspector completed her investigation in December 2005. Mr Chaudhry was fully informed of the investigation and participated in a number of meetings with both Mr Horn and Ms Keightly from late August 2005. Given that, I do not accept Mr Ur Rehman failed to request payment.

[57] I do not accept the second submission. I have already found Mr Ur Rehman was entitled to leave his employment as a result of breaches by his employer.

[58] The Labour Inspector and Mr Ur Rehman are entitled to pursue their claims and to have them determined.

### **Labour Inspector's claims**

#### Outstanding holiday pay

[59] On 20 June 2005 a call taker at DOL contact centre, thru her supervisor, forwarded an email the labour inspectorate in Hamilton outlining a complaint received on behalf of Mr Ur Rehman. On 8 August 2005 the written complaint was received. The complaint, as already set out in this determination contained allegations relating to the standard of accommodation

provided to Mr Ur Rehman, that his passport was being held by his employer and raises concerns about the payment of wages.

[60] Mr Mark Horn, a Labour Inspector with DOL met with Mr Chaudhry on 23 August 2005 and requested copies of the wages and time records for Mr Ur Rehman. He confirmed this request in writing on 24 August 2005.

[61] Mr Rehman was formally interviewed by DOL on 31 August 2005 and Mr Chaudhry was interviewed on 6 September 2005.

[62] On 16 December 2005 Ms Keightly confirmed to Mr Chaudhry in writing that she had completed her investigation into Mr Ur Rehman's claim and found that \$6,898.80 was owing in unpaid holiday pay, sick leave and wages and requested payment to be made by 5 January 2006.

[63] On 2 February 2006 Ms Keightly contacted Mr Chaudhry by telephone and advised him that she would like to meet with him to discuss her investigation report. She followed this up with a second call on 9 February where Mr Chaudhry advised her he had moved and had not received the investigation report. Mr Chaudhry then attended the DOL offices in Hamilton and was provided with a copy of the report. After briefly perusing the report Mr Chaudhry advised Ms Keightly that the company did not have enough money to pay the outstanding debt. Ms Keightly advised Mr Chaudhry that he would have to provide proof of the company's inability to pay the debt.

[64] On 16 February 2006 Mr Chaudhry returned to DOL, with ASB statements as proof that the company could not pay the debt. Ms Keightley asked Mr Chaudhry to provide her with a schedule of how much he was prepared to pay on a monthly basis towards the debt. Ms Keightley told me Mr Chaudhry then enquired as to whether they could make this go away. Ms Keightly says she advised Mr Chaudhry he could make it go away by paying Mr Ur Rehman what he was owed.

[65] After a number of conversations with Mr Chaudhry failed to produce either a schedule of payments or the payment in full, Ms Keightly wrote to Mr Chaudhry on 6 March 2006, requesting payment and advised Mr Chaudhry that failure to pay would result in an application to the Employment Relations Authority.

[66] In her statement of problem Ms Keightly sought payment of \$6,114.50 for the outstanding holiday pay. I note that Ms Keightly has appropriately reduced the sum originally set out in her report by the outstanding wages now being claimed for by Mr Ur Rehman, but

has not made any allowance for the outstanding sick leave, which is also being claimed by Mr Ur Rehman.

[67] At the investigation meeting Mr Chaudhry accepted liability for the arrears outstanding and did not dispute the calculation of the claim.

[68] I find Mr Ur Rehman is owed the total gross sum of \$5,872.60 for unpaid holiday pay.

**Pakiwi Traders Limited t/a Tandoor Pakistani Cuisine is ordered to pay to the Labour Inspector for Mr Ur Rehman's credit the gross sum of \$5,872.60 in respect of outstanding holiday pay and to do so within 28 days of the date of this determination.**

#### Interest

[69] The Authority has discretion to award interest on unpaid holiday pay. The respondent's withholding of Mr Ur Rehman's statutory entitlements warrants an award of interest for the period he has been denied what is owed to him. The interest calculated under clause 11 of Schedule 2 of the Employment Relations Act is to be at a rate not greater than the 90-day bill rate at the date of the order plus 2 per cent. Today's 90-day bill rate is 7.66 per cent. I use my discretion to set interest at one per cent point higher than this, that is at the rate of 8.66 per cent a year.

**Pakiwi Traders Limited t/a Tandoor Pakistani Cuisine is ordered to pay to the Labour Inspector for Mr Ur Rehman's use interest on the sum of \$5,872.60 at the rate of 8.66% per annum from the date of filing, 1 June 2006 until the date of payment and such interest to be paid within 28 days of the date of this determination.**

#### Penalty

[70] I am satisfied that the respondent has failed to comply with the requirements of the Holidays Act 2003 to calculate and pay holiday pay owing to Mr Ur Rehman. The respondent had no argument that Mr Ur Rehman had not worked for him and accrued the minimum statutory entitlements.

[71] The Labour Inspectors report was completed in December 2005 and forwarded to Mr Chaudhry. He was overseas and did not receive the report until February 2005.

[72] As soon as he received the report Mr Chaudhry approached DOL with proof and explanations as to why he could not pay the total amount due. Mr Chaudhry was invited to provide a payment schedule but he did not. In March Ms Keightly advised Mr Chaudhry that the amount remained outstanding and failure to pay the debt would result in proceedings being filed in the Authority.

[73] Mr Chaudhry continued to refuse to pay the debt and his refusal has been deliberate. Under the circumstances it is appropriate that a penalty be imposed, but this should be at the low end of the range provided by the Act.

**Pakiwi Traders Limited t/a Tandoor Pakistani Cuisine is ordered to pay to the Employment Relations Authority, for credit to the Crown account, a penalty of \$1,000 pursuant to section 75 of the Holidays Act 2003 for failing to pay Mr Ur Rehman his annual holiday entitlements.**

#### Costs

[74] The Inspector shall also have her filing fee.

**Pakiwi Traders Limited t/a Tandoor Pakistani Cuisine is ordered to pay to the Labour Inspector \$70.00 in reimbursement of the filing fee on this application and to do so within 28 days of the date of this determination.**

#### **Mr Ur Rehman's Claim**

[75] Mr Ur Rehman says he was not paid his last pay totalling \$784.30. He also says he is owed \$241.90 for sick leave arising from sick leave taken in September 2004, after suffering from an accident.

[76] I find that Mr Ur Rehman is owed the total gross sum of \$1026.20 for outstanding wages and sick leave.

**Pakiwi Traders Limited t/a Tandoor Pakistani Cuisine is ordered to pay to Mr Ur Rehman the gross sum of \$1026.20 in respect of outstanding holiday pay and to do so within 28 days of the date of this determination.**

[77] Mr Ur Rehman has had to file his employment relationship problem in the Authority to receive his lawful entitlements. He is therefore entitled to be reimbursed with the filing fee of \$70.00.

**Pakiwi Traders Limited t/a Tandoor Pakistani Cuisine is ordered to pay to Mr Ur Rehman \$70.00 in reimbursement of the filing fee on this application and to do so within 28 days of the date of this determination.**

