

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
ER AUTHORITY WELLINGTON OFFICE**

**BETWEEN** Nicola Louise Hape Medway – Labour Inspector (Applicant)

**AND** Traffic Safety Services (2002) Limited (Respondent)

**REPRESENTATIVES** Nicola Medway for herself  
No appearance by or for the Respondent

**MEMBER OF AUTHORITY** G J Wood

**INVESTIGATION**

**MEETING** 20 June 2006

**DATE OF** 20 June 2006

**DETERMINATION**

DETERMINATION OF THE AUTHORITY

1. In this case the Labour Inspector seeks a compliance order, a penalty and costs for failure by the respondent (Traffic Safety Services) to produce wage, time and leave records required of it under s.229 of the Act in respect of a former employee, Mr Santanna Tuitama.
2. The respondent failed to lodge a statement in reply in respect of this application. Similarly, it failed to attend the conference call. Notice of the investigation meeting and the directions notice, which contained information on the requirements on Traffic Safety Services as a respondent, was sent to its registered office, its work place and the private residence of Ms Kim Barnden, the sole listed director of Traffic Safety Services. Only one of these notices was returned as undeliverable.
3. A telephone call to the respondent's officers and to Ms Barnden did not result in any information being provided to the Authority's support staff about why the respondent was not represented at the investigation meeting held this morning.
4. After a 30 minute delay I therefore determined, pursuant to clause 10 of Schedule 2 of the Act, to proceed without the respondent being represented, as no good cause had been shown for its failure to be represented. Traffic Safety Services' omissions

in this matter also appear therefore to be clearly material to the provisions of s. 181 of the Act.

5. Ms Barnden rang the Authority's support staff well after the investigation meeting had been completed, stating that she had sought and been granted an adjournment by the Authority the previous week. Ms Barnden was told that any such application would have had to have been made and granted in writing, which had not occurred. Ms Barnden made no other initiatives over this matter and was told that Traffic Safety Services now had the options of either complying with the Authority's determination, to be issued that day, or seek to challenge it.
6. I am satisfied that no one representing the Authority had given Ms Barnden any undertaking as to an adjournment. I therefore have proceeded to issue this determination as Traffic Safety Services has, I find, exhausted all reasonable opportunities to have been involved in the Authority's investigation process.
7. Following several requests for wage, time and leave records over many months having been ignored by Traffic Safety Services, some information was received by the Labour Inspector on 26 April 2006. I am satisfied that this information did not meet the requirement of the provision of all relevant wage, time and leave records and other documentation recording the remuneration of Mr Tuitama as is required to be kept by law, as the records provided do not comply with s.81 of the Holidays Act 2003, relating to whether any public holidays were worked or not, which may also impact on any annual holiday pay due.
8. Thus it is clear that Traffic Safety Services has not met its legal obligations to the Labour Inspector. I therefore order the respondent, Traffic Safety Services (2002) Limited, to produce to the Labour Inspector by 4pm 4 July 2006, any wages, time and leave records and any other documentation recording remuneration that are required to be kept under the Employment Relations Act or any other Act in respect of Mr Tuitama's employment with it. In particular it needs to identify the days on which Mr Tuitama worked, including the dates and hours of, and any payment for, any public holidays worked.

9. I also formally notify Traffic Safety Services (2002) Limited that failure to comply with this compliance order will mean that the Labour Inspector may apply to the Employment Court for it to be fined and/or have its property sequestered.
10. I find that this is an appropriate case for a penalty. Traffic Safety Services clearly failed to meet its statutory obligations to keep and/or produce full wage, time, leave and remuneration records. Traffic Safety Services has repeatedly ignored the Labour Inspector's request for information, even although any response to the Labour Inspector at all may have obviated the need for these proceedings.
11. While the maximum penalty is \$10,000, given the apparent small size of Traffic Safety Services, its partial compliance with the statutory requirements and the nature of the breach I find that a penalty of \$200 is appropriate.
12. I therefore order the respondent, Traffic Safety Services (2002) Limited, pay to the Crown a penalty of \$200.
13. The Labour Inspector has clearly incurred expenses in having to bring this matter to the Authority, by way of a filing fee. I therefore order the respondent, Traffic Safety Services (2002) Limited, to pay to the applicant, Nicola Medway – Labour Inspector, the sum of \$70 in expenses.

**G J Wood**  
**Member of the Employment Relations Authority**