

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 190/07
5086549

BETWEEN ANTON LIONEL TALJAARD,
LABOUR INSPECTOR
Applicant

AND PACIFIC ISLAND EARLY
CHILDHOOD COUNCIL OF
AOTEAROA
Respondent

Member of Authority: Marija Urlich

Representatives: Anton Taljaard, in person
 Amalaini Ligalevu, for Respondent

Investigation Meeting: 25 June 2007

Determination: 26 June 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Labour Inspector Taljaard brings a holiday pay claim on behalf of Tina Vao, a former employee of the Pacific Island Early Childhood Council of Aotearoa (“PIECCA”). Mr Taljaard has provided a comprehensive report calculating the outstanding holiday pay entitlement and recording the steps taken to calculate and recover that sum. He seeks the following orders from the Authority:

- (i) recovery of outstanding holiday pay of \$1,101.60 gross;
- (ii) interest calculated on that sum;
- (iii) penalties for failure to pay outstanding holiday pay, failure to provide holiday records and failure to provide wage and time records; and
- (iv) recovery of the filing fee.

[2] In its statement of reply PIECCA does not dispute the outstanding holiday pay but says Ms Vao left her employment without giving the required notice, she continued to be paid for a period after she left her employment and asks if that amount can be off set against the outstanding holiday pay.

[3] Mrs Amalaini Ligalevu is PIECCA's chairperson. She represented and gave evidence at the investigation meeting on PIECCA's behalf. With the leave of the Authority Mrs Ligalevu attended the investigation meeting by telephone.

Discussion

[4] Ms Vao was employed by PIECCA from 7 February 2006 until 12 September 2006. On leaving her employment she did not receive holiday pay and lodged a complaint with the Labour Inspectorate. The complaint was duly investigated, payment of the outstanding sum requested and when those requests were not complied with this application was lodged with the Authority. Wage and time records and holiday records were not produced on the request of the Labour Inspector.

[5] At the investigation meeting Mrs Ligalevu confirmed that PIECCA does not dispute the Labour Inspector's calculation of Ms Vao's holiday pay entitlement or that it is outstanding. She asked if that sum could be off set against the wages paid to Ms Vao after she left her employment. Holiday pay is a statutory minimum code entitlement, the payment of which cannot be lawfully withheld to off set an alleged overpayment. I record that PIECCA has not lodged an overpayment claim against Mrs Vao.

[6] I asked Mrs Ligalevu why the wage and time records and holiday records were not provided to the Labour Inspector on request. She said that at the time this matter arose she had recently taken on the role of chairperson of PIECCA, that the records were in disarray and that a consultant had now been engaged to assist with these matters.

[7] The Labour Inspectors' role is to enforce minimum code entitlements and that, to this end, it is a statutory requirement that wage and time records and holiday

records be produced on request. PIECCA's failure to provide these records on request was a serious matter which left it vulnerable to a penalty being imposed.

Determination

[8] Having considered the evidence received, including Mr Taljaard's comprehensive investigation report, I make the following orders:

- (i) Pacific Island Early Childhood Council of Aotearoa is to pay to the Labour Inspectorate for the benefit of Tina Vao the sum of \$1,101.60 gross, being her outstanding holiday pay entitlement, pursuant to section 24 of the Holidays Act 2003;**
- (ii) Interest is to be calculated on the sum at the rate of 7% from the date it was due and owing, being 12 September 2006, until date of payment, pursuant to section 84(2) Holidays Act 2003; and**
- (iii) Pacific Island Early Childhood Council of Aotearoa is to reimburse the Labour Inspectorate \$70, being the filing fee incurred in lodging this application.**

[9] The penalties sought will not be awarded. I am satisfied that it has been clearly communicated to PIECCA that holiday pay and the alleged overpayment are separate issues. I am also satisfied that PIECCA has taken steps to improve its pay records and that the failure to provide these records to the Labour Inspector on request was a consequence of those records not being adequately administered.

Marija Urlich

Member of the Employment Relations Authority