

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 357/07  
5043362

BETWEEN

LABOUR INSPECTOR  
(DARREN CARR)  
Applicant

AND

H F C LIMITED T/A BIG  
RIVER CAFE  
Respondent

Member of Authority: Dzintra King  
Representatives: Applicant In Person  
No Appearance for Respondent  
Investigation Meeting: 1 November 2007  
Determination: 15 November 2007

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Ms Chantelle Selwyn, a former employee of the respondent, complained to the Labour Department regarding the respondent's failure to pay holiday pay and public holiday pay. The Labour Inspectorate investigated and forwarded a claim for arrears to Ms Mary Ann Kenworthy, the director of the respondent. Ms Kenworthy failed to respond to the claim and has not paid the monies sought.

[2] The respondent did not file a Statement in Reply and did not appear at the Investigation Meeting.

[3] On behalf of Ms Selwyn the Labour Inspectorate seeks:

- \$1,225.24 gross in outstanding annual holiday pay and payment for statutory days worked pursuant to s 228 (1) Employment Relations Act 2000.
- Interest on the above amount pursuant to s 84 (2) Holidays Act 2003.
- A penalty of \$10,000 pursuant to s 75 (2) (a) (b) Holidays Act 2003 for failure to pay outstanding annual and public holiday pay.
- A penalty of \$10,000 pursuant to s 75 (2) (e) Holidays Act 2003 for failure to provide a Labour Inspector with holiday records.

[4] Ms Selwyn's employment terminated on 28 February 2006.

[5] Mr Carr examined the time and wages records supplied. These make reference to holiday pay which has not been paid. No holiday records were supplied although Mr Carr had requested them. Mr Carr also ascertained that the time and wage records showed that a number of public holidays had been worked and that no leave had been taken.

[6] The respondent is to pay the sum of \$1,225.24 to the applicant.

[7] The respondent is to pay interest on the sum of \$1,225.24 at the rate of 10.71% from 28 February 2006 until the monies are paid in full.

[8] The respondent is to pay a penalty of \$5,000 for failure to pay outstanding annual and holiday pay.

[9] The respondent is to pay a penalty of \$5,000 for failure to supply holiday records.

[10] The above penalties are to be paid into the Employment Relations Authority and then into the Crown Bank Account.

[11] The respondent is also to pay the \$70 filing fee.

Dzintra King

Member of the Employment Relations Authority

