



[3] As no steps were taken, by a memorandum of 9 October 2007 I directed the matter proceed to an investigation meeting and that Jatcom be served with the memorandum and a Notice of Investigation Meeting. The memorandum particularly advised that Jatcom could attend to seek the Authority's leave to defend the Inspector's application.

[4] At 10.00am yesterday there was no attendance by Jatcom. I telephoned Jatcom's director Ms Anne (Annie) Dorothy Sullivan ("Ms Sullivan") and she denied any knowledge of the investigation meeting today. I advised her I did not accept she had no knowledge as she was plainly in correspondence with the Authority's support staff. I informed her I would proceed and that if she wished to seek leave she should attend at the Authority at 11.30am. She duly did so. I invited her to seek leave and she eventually disclosed that her son is very ill at present and that there have been a series of unfortunate events in the business that have required her urgent attention. She apologises for taking no steps and assures the Authority her inaction is not intentional.

[5] Ms Sullivan says on oath that she has never seen the application. She also concedes however she never sought it from her registered office. The inspector does not oppose the application for leave. It is always preferable that an employment relationship problem be investigated as to its substantive merits with the actual involvement of both parties, rather than being determined on a default basis. For these reasons, I granted leave to Jatcom to defend the inspector's application.

[6] As a result of Jatcom's failure to take steps I did not consider mediation would contribute constructively to resolution of the problem. Having given consideration to the matter of mediation, I proceeded to deal with the application. This determination disposes of the Inspector's application.

### **The claim for wage arrears**

[7] By section 228 of the Act the Inspector has standing to bring a claim for arrears of wages in an employee's name under section 131 of the Act. The Inspector seeks to

recover arrears of wages being holiday pay due to Mr Pulfer-Ridings under the *Holidays Act 2003*.

[8] The Inspector sought arrears in the gross sum of \$912.00 on Mr Pulfer-Ridings' behalf from Jatcom. That sum is Mr Pulfer-Ridings own assessment of what he is owed by Jatcom. It is six days holiday pay calculated on eight hours at \$19.00 per hour.

[9] I find that the Inspector sought to verify the sum alleged by Mr Pulfer-Ridings to be owing. The Inspector corresponded with Ms Sullivan both in writing and by telephone. In essence, Jatcom denied any liability to Mr Pulfer-Ridings but more than that, it maintained that it had in fact overpaid Mr Pulfer-Ridings.

[10] I find that despite repeated formal and polite request, Jatcom failed to produce to the Inspector the wage and time record it is required to keep by section 130 of the Act. The information that was provided to the Inspector was incomplete and suspicious and my own assessment of it is that it was wholly inadequate and completely unreliable. I find that Jatcom has failed to keep and maintain a wage and time record in terms of section 130 of the Act.

[11] Because of its failure to keep the appropriate verifying records, I accept Mr Pulfer-Ridings' contention as communicated to the Inspector that Mr Pulfer-Ridings is owed six days holiday pay. I am satisfied that there has been default in payment to the employee Mr Pulfer-Ridings of wages in the form of annual holiday pay in the gross sum of \$912.00. **I order Jatcom Limited t/a The Pukekohe Printing Works to forthwith pay to the Inspector for Mr Pulfer-Ridings' credit the gross sum of \$912.00.**

[12] As Mr Pulfer-Ridings has stood out of his arrears of wages since the termination of his employment, it is right that he have interest on it. **I order Jatcom Limited t/a The Pukekohe Printing Works to pay to the Inspector for Mr Pulfer-Ridings' credit, interest on the sum of \$912.00 at the rate of 10% from 8 February 2007 until the date of payment.**

## The claim for penalties

[13] Jatcom has had notice of the inspector's claim for penalties against it.

[14] Under cover of letters dated 2 April 2007 and 23 July 2007, the inspector served notices requiring production of wage, time and holiday records held by Jatcom in respect of Mr Pulfer-Ridings. The notices pursuant to section 229(c) of the Act required production within 14 days.

[15] I find that Jatcom failed to provide the full and complete record that was formally requested by the Inspector.

[16] Jatcom's failure to comply with the notices under section 229(c) renders it liable to penalties under section 229(3) of the Act. That section provides:-

*(3) Every employer who, without reasonable cause, fails to comply with any requirement made of that employer under subsection (1)(c) or subsection (1)(d) is liable, in an action brought by a Labour Inspector, to a penalty under this Act imposed by the Authority.*

[17] I am satisfied, on the balance of probabilities, that Jatcom did not comply with the notice to produce dated 2 April 2007 and the notice to produce of 23 July 2007. I am satisfied that Jatcom had no reasonable excuse for its failures. I conclude a penalty is warranted. **I order Jatcom Limited t/a The Pukekohe Printing Works to pay a penalty of \$2,000.00 pursuant to section 229(3) of the Employment Relations Act 2000. Half of that penalty shall be paid into the Authority and the other half shall be paid to the Inspector for Mr Pulfer-Ridings' credit.**

[18] Ms Sullivan impressed upon the Authority Jatcom's present precarious financial position. Although there is no detail of the precise situation tendered to the Authority, I am prepared to accept Ms Sullivan's evidence of the same. Accordingly the penalties ordered above shall be paid by Jatcom in four equal instalments the first due on 30 November 2007, the second on 31 December 2007, the third on 31 January 2008 with the final instalment due on 28 February 2008.

[19] Finally I order **Jatcom Limited t/a The Pukekohe Printing Works** to pay to the Inspector **\$70.00** being the lodgement fee on this application.

Leon Robinson  
Member of Employment Relations Authority