

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN	Alefosio Lilo
AND	R. V. Motor Home World (2003) Limited
REPRESENTATIVES	Losalia Lilo for Applicant Mike Holt for Respondent
MEMBER OF AUTHORITY	Marija Urlich
INVESTIGATION MEETING	18 April 2007
DATE OF DETERMINATION	18 April 2007

DETERMINATION OF THE AUTHORITY

[1] Mr Lilo resigned from his employment with R. V. Motor Home World (2003) Limited effective 25 January 2007. He has not received his outstanding holiday pay entitlement of four weeks and seeks orders requiring R. V. Motor Home World (2003) Limited to pay that outstanding entitlement to him.

[2] Mr Lilo filed his holiday pay application in the Authority on 2 March 2007. No statement of reply was filed by the respondent following two written requests for such from the Authority. The Authority set down an investigation meeting for today's date and a notice of that meeting was personally served on Mike Holt, a director of R. V. Motor Home World (2003) Limited, at the address for service provided on the companies register.

[3] Mr Lilo attended this morning's investigation meeting at the scheduled time. He was accompanied by his adult daughter, Ms Losalia Lilo, who acted as his representative. Mr Holt did not attend. At 10.30am I asked an Authority support officer to contact Mr Holt who confirmed he was aware of Mr Lilo's claim and that he had been served with the notice of investigation meeting. Mr Holt said he had faxed a reply to the Authority and was waiting for the Authority to respond. I record that the Authority has received Mr Holt's fax, which sets out his response to Mr Lilo's application. The fax does not refer to the investigation meeting. When Mr Holt was advised that the investigation meeting would proceed at 10.45am he asked if he could attend by telephone. That request was referred to me and granted.

[4] At 10.45am the investigation meeting proceeded. Mr Holt attended by telephone. He said he did not dispute that Mr Lilo's holiday pay entitlement was outstanding and accepted that that entitlement amounted to four weeks. Mr Holt said he would pay the amount by

cheque within seven days of the date of the investigation meeting and that the cheque would be posted to Mr Lilo's address, as provided on the statement of problem. That cheque should be accompanied by a pay slip to properly account to Mr Lilo as to its contents.

[5] How much is owed to Mr Lilo? Mr Lilo was paid \$12 per hour for 40 hours work per week. Multiplied by four weeks Mr Lilo's holiday pay entitlement totals to \$1920. I record that this calculation has been made without the assistance of holiday pay records. Mr Lilo's application shows that he has made repeated requests of R. V. Motor Home World (2003) Limited to provide him with copies of holiday records and that those records have not been forthcoming. When Mr Holt was questioned about this today his reply was vague and he repeated that he did not dispute the entitlement claimed by Mr Lilo. Employers are legally obliged to keep and provide on request holiday records¹. Failure to do so can result in a penalty of upwards of \$10,000 being awarded² against a company which has been found to have blatantly and deliberately breached these obligations. No penalty was sought in relation to this matter. However, I draw R. V. Motor Home World (2003) Limited's attention to the seriousness of the matter and the exposure it risks if in the future it disregards its legal obligations in this respect.

[6] R. V. Motor Home World (2003) Limited has not provided any reason why it did not pay Mr Lilo's holiday pay entitlement when it was due and owing at the end of his employment. R. V. Motor Home World (2003) Limited has had the benefit of monies owed to Mr Lilo for almost three months. In these circumstances it is appropriate that an order for interest on the amount outstanding is made to the benefit of Mr Lilo.

Orders

[7] R. V. Motor Home World (2003) Limited is ordered to pay Alefosio Lilo the sum of \$1920.00 in outstanding holiday pay entitlement pursuant to section 24 Holidays Act 2003.

[8] R. V. Motor Home World (2003) Limited is ordered to pay Alefosio Lilo interest on the outstanding holiday pay entitlement calculated from 25 January 2006 to date of payment at the rate of 7%. This order is made pursuant to section 84(2) Holidays Act 2003.

[9] R. V. Motor Home World (2003) Limited is ordered to reimburse Alefosio Lilo

¹ Section 81 & 82 Holidays Act 2003

² Section 75 Holidays Act 2003

\$70, the filing fee incurred in lodging this application with the Authority.

Marija Urlich
Member, Employment Relations Authority

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Member of Employment Relations Authority