

[5] Pursuant to s 229 (3) and (7) Employment relations ct 2000 a penalty of \$10,000 is sought for failure to provide the Labour Inspector with time and wage records for the full period of employment.

[6] The recovery of the \$70 filing fee is also sought.

History

[7] Ms Leato was employed by the respondent from 1 April 2006 until the first week of August 2007. The recorded period of employment was from the week ending 7 April 2006 until 27 January 2007.

[8] Mr Retzlaff said there were no records for the period from January 2007 till the end of August 2007 because Ms Leato was not able to be legally employed and she resigned in January 2007 and was subsequently re-employed on an “unofficial” basis.

[9] On 20 September 2007, during a meeting with the respondent, the Labour Inspector was informed that Ms Leato was an independent contractor for the “unofficial” period of employment.

[10] The respondent failed to participate in a mediation.

DECISION

[11] Mr Retzlaff’s argument that Ms Leato was a contractor was substanceless. She did the same work as before and on the same basis. Mr Retzlaff was unable to any way n which Ms Leato may have been able to maximise her earnings as a purported contractor. He supplied all the product for the food preparation and Ms Leato did the work under the direction of Mrs Retzlaff. Ms Leato was an employee for the entire period of employment, there being no such legal entity as an “unofficial” period of employment.

[12] The respondent is to pay the applicant the sum of \$3,021.70 gross in outstanding holiday pay.

[13] The respondent is to pay interest on the above amount at the rate of 10.64% running from the date of termination until the amount is paid in full.

[14] Mr Retzlaff told me he did not realise he had to pay holiday pay prior to an employee's being employed for a full year. An employer has an obligation to familiarise himself with the relevant legislation. A penalty of \$2,000 is payable pursuant to s 75 (2) (a) Holidays Act 2003 for failure to pay outstanding holiday pay. This penalty must be paid to the Employment Relations Authority for payment into the Crown Bank Account.

[15] A penalty of \$2,000 is payable pursuant to s 75 (2) (e) Holidays Act 2003 for failing to provide a holiday record. This penalty must be paid to the Employment Relations Authority for payment into the Crown Bank Account.

[16] A penalty of \$2,000 is payable to s 229 (3) and (7) for failure to provide a time and wages record for the full period of employment. This penalty must be paid to the Employment Relations Authority for payment into the Crown Bank Account.

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

Dzintra King

Member of the Employment Relations Authority