

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

5080508  
CA 13/08

BETWEEN	LABOUR INSPECTOR Applicant
AND	R.V. MOTOR HOME WORLD (2003) LIMITED Respondent

Member of Authority: Philip Cheyne

Representatives: Kim Baldwin, Advocate for Applicant  
No appearance of Respondent

Investigation Meeting: 15 February 2008 at Christchurch

Determination: 15 February 2008

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Maureen Pye worked for R. V. Motor Home World (2003) Limited from April 2004 until 31 January 2007. After she finished there she lodged a complaint with the Department of Labour about holiday pay. The complaint was investigated by a Labour Inspector who received limited co-operation from the company in her investigation. The Labour Inspector lodged a statement of problem in September 2007 claiming holiday pay of \$5630.73 (gross), interest, a penalty and costs.

[2] The Authority sent the proceedings to the respondent. When no reply was lodged, the senior support officer contacted the respondent's director (Michael Holt) who then sent a fax to the Authority asking for details about some aspects of the claim and making some complaints about Ms Pye allegedly breaching the employment agreement. Those complaints are not relevant to the statutory claims made by the Labour Inspector. A phone conference was scheduled but the call to Mr Holt went to his answerphone. Material later placed on the Authority file indicates that Mr Holt knew about the phone conference but mistakenly thought it was set for 9.00 am rather

than 9.30 am. The phone conference proceeded without the respondent, directions were made and a date set for an investigation meeting.

### **No attendance for the respondent**

[3] There has been no attendance for the respondent this morning.

[4] I am satisfied that the notice of directions and notice of investigation meeting were served on the respondent. Records show that these documents were delivered to and signed for by *M Holt* on 28 November 2007.

[5] There being no good cause shown for the respondent's non attendance, I decided to proceed with the investigation meeting.

### **Findings**

[6] I am satisfied that the Labour Inspector has correctly calculated that arrears of holiday pay of \$5630.73 (gross) is owed to Maureen Pye. The respondent is ordered to pay that sum to the Labour Inspector for the benefit of Maureen Pye.

[7] There is a claim for interest. The respondent is ordered to pay interest on the arrears of holiday pay at the rate of 10% per annum commencing on 1 February 2007 until the arrears are paid in full. The interest is to be paid to the Labour Inspector for the benefit of Ms Pye.

[8] I am satisfied that the respondent breached sections 24, 25, 40(3)(b) and 56 of the Holidays Act 2003. Under section 75 of the Holidays Act 2003 non compliance with any of those sections renders a company liable to a penalty of up to \$10,000.00.

[9] Section 229(1) of the Employment Relations Act 2000 empowers a Labour Inspector to require the production of wages, time and holiday and leave records. I am satisfied that the Labour Inspector did require the respondent to provide such records for Maureen Pye on or about 12 June 2007. Despite being reminded of the obligation to comply, the respondent failed to produce the requested records. No reasons have been given for this failure. The respondent is therefore liable to a penalty of up to \$10,000.00 for this breach under section 229(3) of the Employment Relations Act 2000.

[10] The claim is for one penalty for these multiple breaches. The failure to pay Ms Pye her holiday pay is a significant breach of statutory obligations owed to an individual while the failure to produce the records requested by the Labour Inspector strikes at the statutory scheme for ensuring compliance with Holiday Pay obligations and resolving any disputes. The circumstances call for a significant penalty. The only thing to be said for the respondent is that there is nothing to suggest these defaults go beyond the current situation. The respondent is ordered to pay a penalty of \$3,000.00 for these breaches.

[11] The Labour Inspector refers to the Authority's power to order a penalty to be paid to a person other than the Crown but quite properly did not advance any argument in favour of such an order. Accordingly the penalty imposed is payable to the Crown.

[12] There is a claim for costs. I was asked to order the respondent to pay the lodgement fee. The respondent is ordered to pay costs of \$70.00 to the Labour Inspector

### **Summary**

[13] The respondent is to pay to the Labour Inspector for the benefit of Ms Pye holiday pay of \$5630.73 (gross), and interest on that sum at the rate of 10% per annum from 1 February 2007 until the sum is paid in full.

[14] The respondent is to pay to the Crown a penalty of \$3,000.00.

[15] The respondent is to pay to the Labour Inspector costs of \$70.00.

Philip Cheyne  
Member of the Employment Relations Authority