



[2] By order of the Authority the statement of problem and notice of investigation meeting were to be served on Corporate Water Brands NZ Limited at the address for service of the respondent company. I am satisfied that service, as directed by the Authority, was effected on 2 April 2008.

[3] Corporate Water Brands NZ Limited did not file a statement in reply and did not make an appearance at today's investigation meeting.

[4] After the scheduled start time of the investigation meeting an Authority Support Officer telephoned the registered office of the respondent and left a message regarding the investigation meeting. A message was also left on the mobile telephone of Grant Hall, a director of the respondent, advising of the scheduled investigation meeting and requesting he return the call urgently. At 11am neither Mr Hall nor any other representative of the company had contacted the Authority. I proceeded with the investigation of this employment relationship problem satisfied that the respondent had had a fair opportunity to attend the scheduled meeting.

### **Determination**

[5] Mr Lynn worked for the respondent company from 27 February 2006 until 29 May 2007 as the production/distribution manager. He ended his employment when the business relocated. He did not receive his holiday pay entitlement in his final pay, though this sum was detailed in his final pay slip. Mr Lynn then referred the matter to the Labour Inspectorate.

[5] Mr Hall told Labour Inspector Robinson that the holiday pay had been withheld because there was a dispute over company property and he wished to see the matter go through the judicial process. The respondent has not filed any counter-claim. At any rate a dispute over company property is not a lawful ground to withhold a holiday pay entitlement.

[5] There is no dispute over the amount of holiday pay entitlement or that that entitlement remains outstanding. There is no lawful basis on which to withhold Mr Lynn's holiday pay entitlement.

[6] I make the following orders:

- (i) **Corporate Water Brands NZ Limited is to pay outstanding holiday pay entitlement of \$1,346.16 (gross) for Dennis Lynn;**
- (ii) **Corporate Water Brands NZ Limited is to pay interest on the amount due and owing. Interest is to be calculated from the date the holiday pay entitlement became due and owing, that date being 30 May 2007, until date of payment in full. Interest is to be calculated at the rate of 9% pa;**
- (iii) **Corporate Water Brands NZ Limited is to reimburse the Labour Inspectorate \$70, being the filing fee incurred in lodging this application.**

[7] A penalty is sought against the respondent. It is appropriate that a penalty is awarded. I am satisfied that the Labour Inspector made demand of the outstanding holiday pay entitlement and that there is no lawful reason why the payment remains outstanding. The respondent is to pay the penalty into the Authority which will then pay that sum into the Crown bank account.

[8] **Corporate Water Brands NZ Limited is ordered to pay a penalty of \$2000 pursuant to section 75(1)(b) Holidays Act 2003.**

Marija Urlich

Member of the Employment Relations Authority