

NOTE: An order for the payment of a penalty appears on p 4 of this determination

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 60/09  
5144256

BETWEEN                      JAMES DENYER LABOUR  
   INSPECTOR  
   Applicant

AND                              REVOLUTION  
   PRODUCTIONS INT.  
   LIMITED  
   Respondent

Member of Authority:      R A Monaghan  
  
Representatives:              J Denyer, in person  
   No appearance for respondent  
  
Investigation Meeting:      23 February 2009  
  
Determination:                24 February 2009

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment relationship problem**

[1]     The Labour Inspector seeks payments of holiday pay on behalf of Gavin Newton. Mr Newton was employed by a company which has been named Revolution Productions Int. Limited (“RPIL”) since a change of name registered on 27 February 2007. It was also named HD Revolution Limited after a change of name registered on 6 March 2006, and the New Zealand Film Unit Limited on the date of registration of the company on 26 April 2005. For convenience I will refer to the company throughout this determination as RPIL.

[2]     A penalty is also sought for RPIL’s failure to provide wage and time records in terms of s 83 and 75(2)(e) of the Holidays Act 2003, and s 161 (1) of the Employment Relations Act 2000.

**Preliminary matter**

[3] RPIL did not appear and was not represented at the investigation meeting. It did not file a statement in reply and has not responded to the Authority's attempts to contact it. It has not offered any reason for its failure to attend the investigation meeting.

[4] Mr Denyer served the notice of an adjourned meeting and the present meeting in person at the offices of RPIL. I am also satisfied as to service of the statement of problem on RPIL at its offices.

[5] I have therefore proceeded under clause 12, Schedule 2 of the Employment Relations Act 2000 to act as fully in this matter as if RPIL had attended or been represented.

**The claim for holiday pay**

[6] Following an approach from Mr Newton, on 12 June 2008 a labour inspector contacted Daniel Hunt by email regarding payments of holiday pay and statutory holiday pay. The inspector followed up by letter to RPIL dated 11 June 2008 requiring copies of the wage, time and holiday pay records.

[7] She received no response. By letter dated 8 August 2008 the labour inspectorate wrote to RPIL again, requiring production of the records within 10 days of the date of the letter and attaching a notice requiring the production of records also dated 8 August 2008.

[8] When no records were produced, the labour inspector obtained from Mr Newton copies of earnings and income details from the IRD. The records showed Mr Newton had received total gross earnings of \$42,777 in the year ending 31 March 2006, \$59,011 in the year ending 31 March 2007, and \$54,860 in that part of the year ending 31 March 2008 during which he was employed by RPIL. The labour inspector used those figures to calculate average fortnightly gross earnings.

[9] Mr Newton also advised the labour inspector that he had taken 5 days' paid annual leave during the first 12 months of his employment, leaving an entitlement of 10 days' leave at the end of that year. During the next 12 month period he took 6 days' paid annual leave leaving an accrued outstanding entitlement of 19 days' leave at the end of that year. During the third part year of his employment he took 8 days' paid annual leave, which was deducted from the outstanding accrued entitlement.

[10] Accordingly, as at the date of termination of his employment, 11 January 2008, Mr Newton was owed a payment for 11 days' unused annual leave. The sum owed was calculated as follows:

Ordinary weekly earnings as at the date of termination (being higher than the average for the preceding 12 months)	\$1,306.20
Average ordinary daily earnings (\$1,306.20/5)	\$ 261.24
Total owed in respect of unused leave (\$261.24 x 11)	\$2,873.64

[11] A further calculation was performed in respect of the final part year of Mr Newton's employment. It was :

(16 weeks x \$1,306.20) x 8%	\$1,671.92
------------------------------	------------

[12] The total owed is:	\$4,545.56
-------------------------	------------

[13] Payment is ordered accordingly.

### **The claim for a penalty**

[14] Section 76 of the Holidays Act provides that only a Labour Inspector may bring a claim for penalty under 75 of the Act. That procedure has been followed here. Section 75 of the Act reads:

“(1) an employer who fails to comply with any of the provisions listed in subsection (2) is liable, -

- (a) ...
- (b) if the employer is a company ... to a penalty not exceeding \$10,000.

(2) The provisions are –

....

- (e) section 83 (which relates to the failure to keep or provide access to a holiday and leave record).

[15] Section 83 of the Holidays Act refers further to sections 81 and 82 of the Act. Section 82(1) authorises labour inspectors to ask an employer to provide a copy of information in the holiday and leave record relating to an employee. Section 82(2) provides:

“(2) An employer who receives a request under subsection (1) must comply as soon as practicable with the request by –

- (a) allowing the ... Labour Inspector to view the record; or
- (b) providing a copy or certified extract of the information concerned.”

[16] RPIL received a request from a labour inspector of the kind set out in s 82(1), and has failed to comply with it.

[17] There was no evidence of any effort to respond to the labour inspectors’ requests, whether by the production of the documents sought, discussion about how an appropriate figure might be calculated, or other means.

[18] There was no explanation of the failure to provide the records required. Instead there was evidence of frequent delays or failures to respond.

[19] A penalty is warranted. RPIL is ordered to pay into the Authority a penalty in the sum of \$2,000.

### **Summary of orders**

[20] RPIL is ordered to pay the sums of:

- a. \$4,545.56 to the Labour Inspector for the use of Gavin Newton; and
- b. \$2,000 into the Authority.

**Costs**

[21] RPIL is further ordered to pay to the Labour Inspector the sum of \$70 in respect of the Authority's filing fee.

R A Monaghan

Member of the Employment Relations Authority