

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 379/09
5276448

BETWEEN JAMES DENYER (LABOUR
INSPECTOR)
Applicant

AND STAPLETON & CO
ACCOUNTANTS LIMITED
Respondent

Member of Authority: Vicki Campbell

Representatives: James Denyer (Labour Inspector) for Applicant
No Appearance for Respondent

Investigation Meeting: 29 October 2009

Determination: 29 October 2009

DETERMINATION OF THE AUTHORITY

[1] Ms Gillian Stewart was employed by Stapleton & Co Accountants Limited (“Stapleton’s”). Since her termination and despite her best efforts Ms Stewart has never received her holiday pay.

[2] The Labour Inspector contacted Stapleton’s and was given an assurance that despite financial problems within the company, arrangements would be made to resolve the matter. That did not happen and the Labour Inspector now seeks an order from the Authority for the payment of outstanding Holiday Pay in the amount of \$1,121.39, the payment of a penalty pursuant to s 75(2)(a) of the Holidays Act 2003 and recovery of the filing fee.

[3] No statement in reply was received from the Respondent. In a memorandum dated 14 September 2009 the Respondent was advised that the matter had been set down and reminded that should it attend the investigation meeting it would require leave to reply or respond to the Labour Inspector’s application. The Notice of

Investigation Meeting sets out the consequences for the Respondent if it does not attend the investigation meeting.

[4] The respondent has also failed to attend the investigation meeting. A phone call was made to the respondent who denied any knowledge of the investigation meeting. Having reviewed the file I am satisfied Ms Beth Stapleton personally received the notice of investigation meeting on 16 September 2009 as it is her signature that appears on the track and trace record.

[5] Having received advice from Ms Stapleton that she would not be in attendance at the investigation meeting I proceeded under clause 12 of Schedule 2 to the Employment Relations Act 2000 to hear and determine the matter as if Stapleton's had attended or been represented.

Holiday Pay

[6] There is no dispute that the holiday pay remains outstanding or that the amount claimed by the Labour Inspector is correct.

Stapleton & Co Accountants Limited is ordered to pay to the Labour Inspector for Ms Stewart's credit, the sum of \$1,121.39 nett in outstanding holiday pay within 28 days of the date of this determination.

Penalty

[7] The Labour Inspector seeks payment of a penalty against the respondent for failure to pay the holiday pay in accordance with the Holidays Act 2003.

[8] I am satisfied a penalty is appropriate in this case and that the penalty should be paid to the Labour Inspector for Ms Stewart's credit. I have received information from Ms Stapleton of the financial and other personal problems she has suffered this year and have taken that into consideration in awarding a penalty at the lower end of the scale.

Stapleton & Co Accountants Limited is ordered to pay to the Labour Inspector for Ms Stewart's credit, a penalty in the amount of \$250.00 pursuant to section 75(2)(a) of the Holidays Act 2003.

Costs

[9] The Labour Inspector shall have the lodgement fee on this application.

Stapleton & Co Accountants Limited is ordered to pay to the Labour Inspector \$70.00 in reimbursement of the filing fee on this application within 28 days of the date of this determination.

Vicki Campbell
Member of Employment Relations Authority