

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 332/09
5274528

BETWEEN DAVID MYATT, LABOUR
 INSPECTOR
 Applicant

AND ALI ALKHAFAJI T/A
 SYLVANA HAIR
 Respondent

Member of Authority: Robin Arthur

Representatives: Labour Inspector in person
 No appearance for Respondent

Investigation Meeting: 11 September 2009 in Auckland

Determination: 14 September 2009

DETERMINATION OF THE AUTHORITY

[1] The Labour Inspector seeks orders for the recovery of \$4364.30 as holiday pay due to Donna Angell from her former employer. The Inspector also seeks (i) interest on the amount owed to Ms Angell; (ii) penalties for the failure by Ali Alkhafaji to pay the holiday pay and to provide records when requested; and (iii) recovery of his fee for lodging this application.

[2] Mr Alkhafaji (also spelt Alkhafagi on some documents) lodged a statement in reply. He does not dispute money is owed to Ms Angell but says he has not paid her because he believes she stole from his shop and because he has financial problems.

[3] He did not attend the investigation meeting. I am satisfied Mr Alkhafaji had proper notice of the meeting because I directed the Inspector to personally serve the notice on him and the Inspector lodged an affidavit confirming he had done so. No good cause for Mr Alkhafaji's absence was shown and I have proceeded to determine

this matter: Clause 12 of Schedule 2 of the Employment Relations Act 2000 (the Act).

[4] From November 2007 to April 2009 Ms Angell worked as a hair stylist at a salon in Albany operated by Mr Alkhafaji and trading as “Sylvana Hair”.

[5] In April 2009 a limited liability company named Sylvana Hair & Beauty Limited was registered with the Companies Office. Its sole director and shareholder Zaineb Abdul Ridha is the wife of Mr Alkhafaji, according to the Inspector’s investigation report. However there is no evidence that Ms Angell’s employment or liability for her entitlements was transferred to this company. I am satisfied the Inspector has, as a result of his discussions with both Ms Angell and Mr Alkhafaji, correctly concluded that Ms Angell was employed personally by Mr Alkhafaji and not by that company. I also took evidence directly from Ms Angell which confirmed her understanding that Mr Alkhafaji was her employer and she had bank statements showing amounts for her wages being paid by “*Alkhafagi A*”.

[6] The Inspector reached his assessment of the amount of holiday pay due based on information provided by Ms Angell. He did so because Mr Alkhafaji did not provide copies of wage and leave records requested by the Inspector, despite promises to do so.

[7] Mr Alkhafaji and his accountant were both provided with the Inspector’s assessment of holiday pay due and an opportunity to comment on or dispute its findings. They did not do so.

Determination

[8] On the basis of the Inspector’s evidence I find that:

- (i) Ms Angell is entitled to the payment of \$4364.30 in holiday pay from Mr Alkhafaji; and
- (ii) Ms Angell is entitled to interest on that amount from 22 April to 14 September 2009; and
- (iii) Mr Alkhafaji breached s24 and 25 of the Holidays Act 2003 by not paying Ms Angell’s holiday pay entitlements at the end of her employment on 21 April 2009; and

- (iv) Mr Alkhafaji breached s83 of the Holidays Act 2003 by failing to provide holiday and leave records when requested by the Inspector; and
- (v) Mr Alkhafaji is liable for penalties for non-compliance under s75 of the Holidays Act 2003.

[9] While Mr Alkhafaji provided some documents with his statement in reply indicating he has a number of financial debts, his non-attendance at the investigation meeting meant I could not address with whether any orders for payments to Ms Angel should allow for instalments. I also note that while Mr Alkhafaji told the Inspector that a complaint of theft by Ms Angell was made to the Police, Ms Angell has not been contacted by the Police about that allegation.

Orders

[10] **By no later than 28 September 2009 Mr Alkhafaji is ordered to pay the sum of \$6516.65 to the Labour Inspector**, comprising the following amounts:

- (i) \$4364.30 for holiday pay owed to Ms Angell (for the benefit of Ms Angell);and
- (ii) \$82.35 as interest on that amount for the period from 22 April to 14 September 2009 (for the benefit of Ms Angell);¹ and
- (iii) \$2000 as penalties for the identified breaches of the Holidays Act (and to be transferred to the Crown account); and
- (iv) \$70.00 in reimbursement of the Inspector's fee for lodging this claim in the Authority.

[11] Should Mr Alkhafaji fail to pay the amounts due by the due date, the Inspector may enforce this order through the Employment Court or the District Court.

Robin Arthur
Member of the Employment Relations Authority

¹ 145 days at 4.75 per cent: clause 11 of Schedule 2 of the Act applied.