

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 25/10  
5277036

BETWEEN

LABOUR INSPECTOR  
(JEANIE MAY HOBBS)  
Applicant

AND

BRANDS HATCH  
RESTORATIONS LIMITED  
Respondent

Member of Authority: Philip Cheyne

Representatives: Labour Inspector (Jeanie Hobbs), the Applicant in person  
No appearance for the Respondent

Investigation Meeting: 4 February 2010 at Christchurch

Determination: 4 February 2010

---

**DETERMINATION OF THE AUTHORITY**

---

[1] The Labour Inspector received a complaint from Jason Horne about non-payment of holiday pay following the termination of his employment at Brands Hatch Restorations Limited. After seeking information from the company the Labour Inspector assessed arrears of holiday pay and sought payment from the company but without success. By this application lodged in August 2009 the Labour Inspector now seeks judgment against the company for the arrears of holiday pay, interest, penalties and costs.

[2] I am satisfied that the statement of problem and the notice of meeting were served on the company as the Authority's file indicates that these documents were delivered to the company at its registered office. The company has not lodged a statement in reply, nor has it participated in any other way with the Authority's investigation.

**Non appearance for the respondent**

[3] There was no appearance for the company this morning. In the absence of any good reason for this non-appearance, I decided to proceed.

**The claims**

[4] On the evidence of the Labour Inspector and accepting her calculations I am satisfied that there has been a default in payment of holiday pay totalling \$5,562.12 (gross).

[5] The company did benefit from some assumptions made in its favour by the Labour Inspector.

[6] The company's failure to pay Mr Horne his holiday pay at the termination of his employment on 12 December 2008 is a breach of s.24 and s.25 of the Holidays Act 2003. Under s.75 of the Act, an employer who fails to comply with these sections is liable to a penalty not exceeding \$10,000.00 at the suit of a Labour Inspector.

[7] The company's failure here is significant. The default represents 25 days' leave as well as proportionate holiday pay for the last part year of service. The company obviously knew of its obligation to keep proper records but it neglected to do so adequately. However, non-payment of holiday pay was not the result of confusion or accident. In mitigation, there is nothing to indicate that the company has committed a similar breach in respect of any other employee. I impose a penalty of \$1,500.00 on the company to be paid to the crown.

**Orders**

[8] Brands Hatch Restorations Limited is to pay to the Labour Inspector for the use of Mr Horne the sum of \$5,562.12 (gross) being arrears of holiday pay.

[9] Brands Hatch Restorations Limited is to pay to the Labour Inspector for the use of Mr Horne interest on the arrears at the rate of 4.5 per cent commencing on 13 December 2008 until the arrears are paid in full.

[10] Brands Hatch Restorations Limited is to pay a penalty of \$1,500.00 to the Crown.

[11] Brands Hatch Restorations Limited is to pay to the Labour Inspector costs of \$70.00.

Philip Cheyne  
Member of the Employment Relations Authority