

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 217/10
5295398

BETWEEN DAVID MYATT (Labour
Inspector)
Applicant

AND PECKS COTTAGE
BAKERIES LIMITED
Respondent

Member of Authority: Alastair Dumbleton

Representatives: Labour Inspector in person
No appearance for Respondent

Investigation Meeting: 6 May 2010

Determination: 7 May 2010

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Labour Inspector Mr David Myatt has claimed outstanding holiday pay and minimum wages due to Ms Jessica Walters, a former employee of the respondent, Pecks Cottage Bakeries Limited. He also claims a penalty for breaches of the relevant employment legislation.

[2] The total amounts claimed are \$157.72 gross in holiday pay and wages, and \$10,000 as penalties.

[3] I am satisfied that the money has been properly claimed on Ms Walters behalf by Mr Myatt. He has carried out the usual thorough investigation and communicated his findings and conclusions in the course of that to Mr Christopher Peck, a Director of the respondent company which had employed Ms Walters in its bakery business.

[4] The Inspector advised the Authority that the amount claimed is approximate only. An accurate assessment has not been possible because of a failure by the employer to make deductions for PAYE and ACC and keep wage and time records. Ms Walters was paid below the minimum wage and in cash at the end of each shift for her work. It appears she was paid at the rate of \$8 net per hour. From information provided by Ms Walters as to the days and hours of her work, the Inspector has assessed the arrears including proportionate annual holiday pay and one statutory public holiday falling during her period of employment at the bakery.

[5] It seems that Mr Peck's resistance to paying the amount requested by Mr Myatt has been based on his assessment of her performance rather than legal entitlement.

[6] After the claim was lodged in the Authority the usual procedure was followed to bring it to the attention of the respondent company and allow it an opportunity to reply to the claim and attend the investigation meeting to be heard, if it wished.

[7] The company has not participated in the investigation at any stage including the meeting held on 6 May 2010, notice of which had been served at the registered office of the company.

Determination

[8] Pecks Cottage Bakeries Limited is ordered to pay to the Labour Inspector, Mr David Myatt, for the use of Ms Jessica Walters, \$157.72 gross as wages and holiday pay due under the Minimum Wage Act 1983 and the Holidays Act 2003.

[9] Pecks Cottage Bakeries Limited is also ordered to pay interest on the above sum at 4.5% per annum from the date of this determination until the amount is fully paid.

[10] Penalties are sought in a total of \$10,000 for breaches of the Holidays Act, Minimum Wage Act and the Employment Relations Act 2000 in respect of a failure to keep wage and time and holiday records.

[11] I do not consider that the penalty should be in proportion to the amount of arrears, which is not a big sum. Pecks Cottage Bakeries Limited is a business bringing in returns for the company as a result of the efforts of workers such as Ms

Walters. It has a responsibility to know and apply the employment laws of New Zealand and has completely failed to do so. It is no justification that Ms Walters was a very young worker likely to be glad of any job and who may not have had high financial obligations while still living at home. The law is for her protection as well as for all others who are employees at any time.

[12] In the circumstances \$1,800 is an appropriate penalty and I order Pecks Cottage Bakeries Limited to pay that amount to the Labour Inspector.

[13] I also order the company to reimburse the Inspector the \$70 filing fee paid to lodge his application.

A Dumbleton
Member of the Employment Relations Authority