

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 385/10
5305419

BETWEEN JOHN ROBINSON (Labour
Inspector)
Applicant

AND AUCKLAND CITICABS
COMBINED TAXIS LIMITED
Respondent

Member of Authority: Alastair Dumbleton

Representatives: Labour Inspector in person
No appearance for respondent

Investigation Meeting: 23 August 2010

Determination: 25 August 2010

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The Authority has investigated a claim brought by Labour Inspector Mr John Robinson to recover annual holiday pay due upon termination of employment to an employee of the respondent Auckland Citicabs Combined Taxis Ltd.

[2] The Inspector became involved when a complaint was made by Mr Sidney Thompson who had worked for Auckland Citicabs as a Dispatcher/Administrator from nearly six years until December 2009. Upon resigning that employment Mr Thompson had expected to be paid out for annual holidays not taken by him during the last year of work. When payment was not made Mr Thompson wrote to the company's director, Mr Jasvinder Gill and its Manager Mr Vikraamjeet Singh.

[3] Mr Thompson confirmed an earlier request made for a total of \$3,073.75 holiday pay and asked for it to be paid within seven days. Mr Thompson included with his letter a typed schedule of all the weekly pays he had received and the days on

which he had taken paid annual leave during that time. It also showed how the total amount had been arrived at.

[4] When this request of Auckland Citicabs was not met Mr Thompson put the claim in the hands of the Labour Inspector for recovery.

[5] The Inspector wrote to the employer, making a statutory request under the Employment Relations Act 2000 and the Holidays Act 2003 for production and inspection of wage and time records or holiday book kept in relation to Mr Thompson's employment.

[6] When the Labour Inspector's request went unanswered he contacted the Manager of the company, Mr Maan, who indicated that the employer was resisting the claim because it believed Mr Thompson had acted dishonestly and stolen property belonging to Auckland Citicabs.

[7] Mr Robinson pointed out that was a Police matter which ought to be taken up by complaint made to the Police, and that the entitlement to holiday pay was a statutory right that was enforceable regardless of the outcome of any complaint about Mr Thompson's conduct or performance while employed.

[8] The Inspector wrote again on 3 May 2010, noting that there had been no reply to his earlier correspondence and requesting payment of \$3,073.75 as the holiday pay due to Mr Thompson. After receiving no reply he lodged his claim in the Authority.

[9] Since then Auckland Citicabs have taken no steps of any kind in relation to the application. The company or its officers did not lodge a statement in reply and did not respond to attempts to have a telephone conference with both parties in this case. Not unexpectedly the company was absent from the investigation meeting held on 23 August 2010.

[10] I am satisfied that in a Notice of Meeting served on the company at its registered office, Auckland Citicabs was warned that if it failed to attend the investigation meeting the Authority could, without hearing evidence from the company, issue a determination in favour of the applicant Inspector.

Determination

[11] I am satisfied that the Labour Inspector has from the information given to him by Mr Thompson correctly established the entitlement to holiday pay claimed of \$3,073.75, which the company is now ordered to pay. Auckland Citicabs has at various times been kept fully aware of the claim and the basis on which it has been made, and the company has made no protest of any error in that regard. It appears to believe, wrongly, that it is entitled to keep this money as some form of set-off or restitution in relation to loss caused by some alleged unlawful conduct of Mr Thompson.

[12] Further I order the company to pay interest on \$3,073.75 at 5% per annum, from 20 January 2010 the date Mr Thompson wrote seeking payment of that amount.

[13] Auckland Citicabs is ordered to pay the principal \$3,073.75 plus the 5% interest within 14 days of the date of this determination.

[14] The Inspector also seeks penalties under the Holidays Act for failure to pay the holiday pay entitlement and for failure to keep or provide access to a holiday and leave record. Section 229 of the Employment Relations Act also provides the same powers for a Labour Inspector to require those records to be produced for inspection.

[15] The major breach is the failure to pay the holiday pay to Mr Thompson when it fell due. The employer appears to have reserved for itself the right to decide when it will comply with legislation or not. I consider that a penalty of \$3,250 in relation to that failure is appropriate and this will also cover the claims for penalty in relation to the failure to keep or provide access to a holiday and leave record.

[16] Citicabs is ordered to pay the Inspector the \$70 filing fee for lodging his application.

A Dumbleton
Member of the Employment Relations Authority