

[3] I therefore determined, as there had been no good cause shown for Northern Star's failure to attend or be represented, to proceed with the investigation pursuant to clause 12 of Schedule 2 of the Employment Relations Act 2000.

[4] I am satisfied from the evidence of Ms Kendrick of the following facts. Mr David Russell was employed by Northern Star and at the termination of his employment did not receive the holiday pay due to him. As best can be ascertained by the Labour Inspector, the sum of \$1,432.67 gross still remains unpaid. This sum could not be definitely ascertained because of Northern Star's failure to engage with the Labour Inspector. The Labour Inspector made many attempts to get wage and time and holiday records from Northern Star without success, and similarly Mr Russell remains unpaid. Such efforts have included calling and writing to Mr Findlay during the course of the last 11 months.

[5] Sought by the Labour Inspector for the use of Mr Russell are the following sums:

- \$1,432.67 gross plus interest;
- The filing fee of \$71.56, which has been paid by the Department of Labour.

[6] The Labour Inspector also seeks penalties of \$10,000 each on two counts (the sum of \$10,000 being the maximum penalty payable):

- First, under the Holidays Act 2003 for failure to pay holiday pay when due, a penalty under s.75 for a breach of s.27 of the Act; and
- Second, under the Employment Relations Act, a penalty for non-provision of wage and time records to a Labour Inspector, under s.135 for a breach of s.229.

[7] I am satisfied that Mr Russell is owed holiday pay and that Northern Star has failed to meet its legal requirements under both the Holidays Act and the Employment Relations Act. These have been deliberate failures by Northern Star and I consider that a penalty in the sum of \$3,000 for each of the two heads claimed is appropriate, particularly given Northern Star's ongoing failure to engage with the Labour Inspector.

[8] I therefore order the respondent, Northern Star Group (NZ) Limited, to pay to the Labour Inspector the following sums:

- \$1,432.67 gross in unpaid holiday pay;
- \$69.02 gross in unpaid interest (with interest continuing to accrue at the rate of 5% per annum);
- \$71.56 for the filing fee.

[9] In addition, I order Northern Star Group (NZ) Limited to pay to the Crown a \$3,000 penalty under s.135 of the Employment Relations Act and a \$3,000 penalty under s.75 of the Holidays Act.

G J Wood
Member of the Employment Relations Authority