

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 81
5331843

BETWEEN	ANTON TALJAARD Applicant
AND	SEVANS OPERATOR HIRE LTD First Respondent
	STEPHEN CHRISTOPHER EVANS Second Respondent

Member of Authority: Dzintra King

Representatives: Anton Taljaard (Labour Inspector) for Applicant
No appearance by First and Second Respondents

Investigation Meeting: 28 February 2011 at Auckland

Determination: 3 March 2011

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This is an application by a Labour Inspector relating to unpaid wages and holiday pay on behalf of Mr Rodney Buck, a former employee of the first respondent, Sevans Operator Hire Ltd (“Sevans”).

[2] The amounts sought are \$2,727.68 gross holiday pay and \$2,076.81 gross unpaid wages. Interest on the holiday pay owed is also sought.

[3] A penalty in relation to the non payment of the holiday pay is sought pursuant to s 75 (1) (b) Holidays Act.

[4] Reimbursement of the filing fee of \$71.56 is sought.

[5] The Labour Inspector seeks to have Mr Evans, director of the company, joined as second respondent pursuant to s 234 Employment Relations Act 2000 in relation to the default in payment of Mr Buck's holiday pay.

Outstanding Wages and Holiday Pay

[6] The amounts sought are not disputed by the first respondent but payment has not been made.

[7] The sum of \$2,727.68 holiday pay is owed to Mr Buck and is to be paid to the Labour Inspector (for the benefit of Mr Buck) under s 228 of the Act.

[8] The sum of \$2,076.81 gross outstanding wages is owed to Mr Buck and is to be paid to Mr Buck under s 131 of the Act.

Recovery against Mr Evans

[9] There are reasonable grounds for believing the company does not have sufficient assets to make the requisite payment.

[10] I authorise the Labour Inspector to bring an action for recovery against Mr Evans, as director of Sevans, if the company defaults in payment of the holiday pay as ordered.

Interest

[11] The holiday pay of \$2,727.68 gross should have been paid to Mr Buck upon the termination of his employment. He is entitled to interest on that sum: s 84 (2) Holidays Act 2003. Exercising the discretion regarding amounts, period and rates available under clause 11 of Schedule 2 of the Employment Relations Act 2000 I award Mr Buck interest on that amount at the rate of 4.8%. The interest is to run from 28 August 2010 until the amount is paid in full.

Penalties

[12] I am satisfied that Sevans has not paid Mr Buck's holiday pay when it was due and that a penalty is warranted: s 75 (1) (b) Holidays Act 2003.

[13] Sevans is to pay to the Crown Account the sum of \$2,000 as a penalty for breach of the Holidays Act 2003.

Costs

[14] Sevans is to pay the lodgement fee of \$71.56 to the Labour Inspector.

Dzintra King

Member of the Employment Relations Authority