

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2012] NZERA Auckland 448  
5392831

BETWEEN JAMES DENYER, LABOUR INSPECTOR  
Applicant

A N D SCORPION LIQUOR (2006) LIMITED  
Respondent

Member of Authority: T G Tetitaha

Representatives: Applicant in person  
No appearance by Respondent

Investigation Meeting: 10 December 2012 at Auckland

Date of Determination: 11 December 2012

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**DETERMINATION OF THE AUTHORITY**

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- A. An order that the respondent pay to the applicant the sum of \$3,417.12 being wage arrears \$3,024.00 and holiday pay \$393.12 (s.131).**
- B. An order for interest on the judgment sum set out in paragraph A at the rate of 5% per annum, calculated from 6 March 2012 until payment (clause 11, Schedule 2 of the Act).**
- C. Imposition of a penalty of \$1,000 (s.229(3)). The Authority orders payment of the whole penalty to the Applicant (s.136(2)).**
- D. An order for the respondent to pay \$71.56 to the applicant being the Authority's filing fee (clause 15, Schedule 2 of the Act).**

## **Employment relationship problem**

[1] Mr Satnam Singh was employed by Scorpion Liquor (2006) Limited (Scorpion Liquor) from the first week of January 2012 until 6 March 2012 as a store person.

[2] There was no written employment agreement.

[3] Mr Singh worked approximately 42 hours per week. Three days per week his hours were from 6pm to 12.30am and four days 5pm to 11.30pm. Work included loading and unloading stock, helping customers, providing security on Friday and Saturday nights and cleaning the toilet and shop.

[4] Mr Singh was paid intermittently. The total amount received was \$1,890.00.

[5] The employment ended on or about 6 March 2012. No holiday pay was paid at termination.

[6] Mr Singh claims wage arrears of \$3,417.12.<sup>1</sup> Mr Singh complained to the Labour Inspector regarding non-payment of wages and holiday pay.

[7] On 29 March 2012 the Labour Inspector, Mr James Denyer, visited Scorpion Liquor at their outlet liquor store located on 1228 Dominion Road, Mt Roskill, Auckland. He was advised by a person at the front counter (who he now knows as the manager Shane Singh) that the manager was unavailable. Mr Denyer gave this person a notice for Scorpion Liquor requiring production of the wage and time records.

[8] On 21 May and 18 July 2012, Mr Denyer wrote to Scorpion Liquor requesting copies of the wages, time and holiday records. No reply was received.

[9] On or about 2 October 2012, Mr Denyer on behalf of Mr Satnam Singh filed a statement of problem seeking payment of the wage arrears of \$3,417.12. Mr Denyer is the applicant in this matter in his capacity as the Labour Inspector.

## **Issues**

[10] The respondent did not attend the investigation meeting. The Authority has the power to proceed if the party fails to attend a meeting pursuant to clause 12 of Schedule 2 of the Act:

### ***12. Power to proceed if any party fails to attend***

*If, without good cause shown, any party to a matter before the Authority fails to attend or be represented, the Authority may act as fully in the matter before it as if that party had duly attended or been represented.*

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<sup>1</sup> \$13 per hour x 42 hours per week = \$546.00 per week x 9 weeks = \$4,914.00 gross. Holiday pay 8% per annum on \$4,914.00 = \$393.12. Wage arrears \$5,307.12 less \$1,890 payments received equates to \$3,417.12.

[11] No good cause has been shown for the failure to attend as the respondent has not contacted the Authority to explain its absence.

[12] The respondent was served by the Authority with a copy of the statement of problem on 2 October 2012.

[13] The Notice of Investigation Meeting was served on the respondent personally by Mr Denyer on 8 November 2012. Mr Shane Singh on behalf of the respondent signed an acknowledgement of receipt on the same day.

[14] A teleconference was held on 19 November 2012 at 10.30am. The respondent's representative, Shane Singh attended. He confirmed he was the manager of Scorpion Liquor which was owned by his mother, Raj Devi. He confirmed he had authority to act on behalf of the respondent and confirmed the respondent was the employer of Mr Satnam Singh.

[15] At the teleconference, the investigation meeting date of 10 December 2012 was confirmed and the respondent directed to file a witness statement detailing how Mr Satnam Singh was employed by the respondent, hours of work, length of employment and agreed hourly rate by 3pm 23 November 2012. A witness statement from Shane Singh was received on 23 November 2012.

[16] The Authority's Support Officer attempted to contact the respondent on 10 December 2012 to ascertain its whereabouts. Despite an attempt to call the telephone number provided, there was no reply from the respondent.

[17] In view of the efforts to engage and contact the respondent and its failure to attend the investigation meeting, the Authority is satisfied it can proceed to hear the matter.

[18] The single issue for determination is whether an order pursuant to s.131 of the Employment Relations Act 2000 (the Act) should be made requiring the respondent to pay the applicant the sum of \$3,417.12.

### **Wage Arrears**

[19] The Authority determines on the written and oral evidence of Mr Satnam Singh and Mr James Denyer that there has been a default in the payment to the applicant of wage arrears of \$3,417.12.

[20] The Authority further determines the applicant is entitled to interest on the judgment sum from the date of termination being 6 March 2012 until payment of 5%.

## **Costs & Penalty**

[21] The applicant seeks recovery of its filing fee of \$71.56.

[22] The Authority determines the above disbursement is reasonable and the applicant is entitled to recover that disbursement. An order for costs shall issue accordingly.

[23] Mr Denyer exercised his power to require Scorpion Liquor to produce wage and time records in March 2012. There has been no compliance with this requirement or excuse provided for the failure to comply provided to the Authority. A penalty is appropriate.

[24] The Authority determines that a penalty of \$1,000 is imposed under s. 229(3). The whole penalty shall be paid to the Applicant under s.136(2).

## **Summary of Orders**

[25] The following orders are made:

- A. An order that the respondent pay to the applicant the sum of \$3,417.12 being wage arrears \$3,024.00 and holiday pay \$393.12 (s.131).
- B. An order for interest on the judgment sum set out in paragraph A at the rate of 5% per annum, calculated from 6 March 2012 until payment (clause 11, Schedule 2 of the Act).
- C. Imposition of a penalty of \$1,000 (s.229(3)). The Authority orders payment of the whole penalty to the applicant.
- D. An order for the respondent to pay \$71.56 to the applicant being the Authority's filing fee (clause 15, Schedule 2 of the Act).

T G Tetitaha  
Member of the Employment Relations Authority