

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 460  
5419831

BETWEEN                      JAMES DENYER, LABOUR  
   INSPECTOR  
   Applicant

A N D                              PETER REYNOLDS  
   MECHANICAL LIMITED t/a  
   THE ITALIAN JOB SERVICE  
   CENTRE  
   Respondent

Member of Authority:        Rachel Larmer

Representatives:              Applicant in Person  
   No appearance for Respondent

Investigation Meeting:        25 June and 03 October 2013 at

Date of Determination:        03 October 2013

---

**DETERMINATION OF THE AUTHORITY**

---

- A     Peter Reynolds Mechanical Limited t/a The Italian Job Service Centre is ordered within 28 days of this determination to pay Mr Denyer, Labour Inspector:**
- (a)     \$1,568.80 for Mr Gareth Costa’s unpaid annual holiday pay;**
  - (b)     Interest of 5% on \$1,568.80 from 22 October 2012 until the amount is paid in full;**
  - (c)     \$71.56 to reimburse his filing fee.**

**Employment relationship problem**

[1]     Mr Gareth Costa was employed by Peter Reynolds Mechanical Limited trading as The Italian Job Service Centre (“the respondent”) between 20 June 2009 and 12 October 2012 as a mechanic.

[2] Labour Inspector Mr James Denyer requested wage and time and holiday and leave records from the respondent for Mr Costa on 26 March 2013 but these were not provided. Mr Denyer visited the respondent and ascertained that it kept no official records.

[3] At the investigation meeting on 25 June 2013 Mr Reynolds said he had wage and time records. The meeting was adjourned part heard so Mr Reynolds could provide Mr Denyer with these records. The Authority's direction for that to occur has not been complied with by the respondent.

[4] I find that has prejudiced Mr Denyer's ability on behalf of Mr Costa to bring a wage arrears claim under s.131 of the Employment Relations Act 2000 (the Act). Mr Denyer has therefore relied on a breakdown of the annual holiday pay owed which was prepared by Mr Costa in accordance with s.132(2) of the Act. From those records Mr Denyer believes the respondent owes Mr Costa \$1,568.80.

[5] Mr Denyer has brought a claim for unpaid holiday pay on behalf of Mr Costa. The claim was first heard at an investigation meeting on 25 June 2013. Although the respondent did not file a Statement in Reply and did not seek leave to do so out of time, Mr Peter Reynolds (the sole director and shareholder of the respondent) appeared at the investigation meeting on 25 June.

[6] He challenged Mr Denyer's claim and alleged he had information to contradict what Mr Denyer had been told by Mr Costa about his annual leave entitlements. The investigation meeting was adjourned part heard to allow Mr Reynolds time to present the material he wished to rely on to Mr Denyer. A timetable for that to occur was set but the respondent failed to comply with the Authority's timetable directions.

[7] When the adjournment was granted the respondent was advised it had been granted an indulgence and it was required to file a Statement in Reply and witness statements supporting its position. That has not occurred.

[8] The respondent did eventually provide Mr Denyer with some information which it says supported its defence of Mr Costa's claim. After considering the information and speaking to both parties Mr Denyer formed the view that Mr Costa's information is more likely than not to be correct so he has preferred that over the respondent's information which he considered unreliable.

[9] Mr Costa says the information the respondent provided to Mr Denyer is not

accurate because the respondent did not keep records at the time. Mr Costa claims the records produced by the respondent have been constructed after the event to support its case and that they conflict with his contemporaneous records he made at the time. Mr Costa says he started keeping his own records when the respondent told him it was not doing so. Mr Denyer is of the same view.

[10] I agree with Mr Denyer's conclusion that there is extraneous information which supports Mr Costa's records. I therefore find on the balance of probabilities that Mr Costa's records of what leave he did or did not take are more likely to be accurate than the respondent's records.

[11] The respondent's purported wage and time records do not comply with the requirements of s.130 of the Employment Relations Act 2000 (the Act), were not produced to the Labour Inspector on request, were not provided in accordance with the Authority's direction and were not verified by the person who purportedly made the records, in breach of the Authority's direction that needed to occur given the accuracy of the records was in dispute.

[12] Mr Denyer says Mr Costa had an annual leave entitlement of 60 days from which he used 47 days annual leave whilst employed. That left a balance of 13 days annual holidays which had been accrued but unused as at the date of termination which Mr Denyer told me totals \$1,924.

[13] Mr Costa was also entitled to 8% of his total gross earnings from his last anniversary date to the date of termination ( $\$14,060 \times 8\% = \$1,124.80$ ). This means the total gross holiday pay owing upon termination is  $\$3,048.80$  ( $\$1,924 + \$1,124.80$ ). Mr Costa was paid  $\$1,480$  for annual holidays in his final pay which leaves a balance due and owing of  $\$1,568.80$  ( $\$3,048.80 - \$1,480$ ).

#### **No appearance by respondent**

[14] I am satisfied the Amended Statement of Problem and Notice of Hearing were served on the respondent. No Statement in Reply has been filed nor has there been any application for leave to file a Statement of Reply out of time being made. The respondent has not communicated with the Authority.

[15] Notwithstanding the respondent having been granted the indulgence of an adjournment of the investigation meeting on 25 June it still did not appear at the investigation meeting today.

## **Outcome**

[16] Under s.132(2) of the Act the Authority may accept as proved all claims made by Mr Costa in respect of the wages he was paid and the hours, days and time he worked unless the respondent proves that Mr Costa's evidence is incorrect.

[17] I find that the respondent failed to keep or produce Mr Costa's wage and time records and that such failure prejudiced Mr Denyer's ability to bring an accurate claim on Mr Costa's behalf. I therefore accept Mr Costa's evidence about the days and hours he worked and about what annual holiday pay is still owing to him.

[18] Peter Reynolds Mechanical Limited Trading as The Italian Job Service Centre is ordered to pay Mr James Denyer, Labour Inspector, for the use of Mr Gareth Costa, \$2,012.80 being his outstanding annual holiday entitlements together with \$71.56 to reimburse the filing fee.

## **Interest**

[19] Interest is discretionary. I consider an award of interest is appropriate in this case. Mr Costa should have received his annual holiday pay upon termination but the respondent's failure to pay him has kept him out of that money. The respondent has had the benefit of the use of Mr Costa's money for almost a year so it should pay him interest on that amount.

[20] The respondent is ordered to pay interest of 5% being the current 90 day bill rate under clause 14 of the Judicature (Prescribed Rate of Interest) Order 2011 from 22 October 2012 until the amount is paid in full.

## **Costs**

[21] Mr Denyer was not legally represented so the issue of costs does not arise. He did incur a filing fee of \$71.56 so the respondent is ordered to reimburse him that amount.

**Rachel Larmer**  
**Member of the Employment Relations Authority**