

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 489
5426564

BETWEEN JONATHAN TREVOR PRINS
Applicant

A N D JAE SALES LIMITED t/a THE
AUSSIE BUTCHER
BIRKENHEAD
Respondent

Member of Authority: Rachel Larmer
Representatives: Applicant in person
No appearance by Respondent
Investigation Meeting: 24 October 2013 at Auckland
Date of Determination: 24 October 2013

DETERMINATION OF THE AUTHORITY

- 1. JAE Sales Limited (JAE Sales) is ordered within 28 days of the date of this determination to pay Mr Prins \$4,436.86 made up as follows:**
 - (a) \$3,417.50 annual holiday pay;**
 - (b) \$270.80 public holiday pay;**
 - (c) \$677 wage arrears;**
 - (d) \$71.56 filing fee.**

Employment relationship problem

[1] Mr Prins was employed as a butcher by JAE Sales from 24 March 2008 until his employment ended on 27 March 2013. Mr Prins seeks to recover wage arrears. He

previously involved a Labour Inspector (Jim Denyer) to assist him in recovering what he says he is owed but that did not result in JAE Sales paying him anything.

[2] Mr Prins was paid weekly each Wednesday evening in arrears. On 18 March 2013 JAE Sales' butchery burned down which obviously closed the business. Mr Prins was paid his normal pay on Wednesday 20 March. He was ready and willing to assist JAE Sales with the clean up arising from the fire but was not required to work. Mr Prins received written notice of the termination of his employment on 27 March 2013 and he received one week's pay in lieu of notice which was paid that day.

[3] Mr Prins claims JAE Sales failed to pay him:

- a. any annual holiday pay when his employment ended;
- b. for the two Easter 2013 public holidays;
- c. a week's wages for the period 21-27 March 2013 when he was available to work but not given any work.

No appearance by respondent

[4] The respondent has not filed a Statement in Reply and it did not attend the Authority's investigation meeting. I am satisfied the Statement of Problem and Notice of Hearing have been served on it. The respondent also failed to comply with the Authority's directions to provide Mr Prins' wage and time records.

[5] In the absence of wage and time records, in accordance with s.132 of the Employment Relations Act 2000 (the Act) I accept as proved all claims Mr Prins has made in respect of the wages actually paid to him and the hours, days and times he worked.

Annual holidays

[6] When Mr Prins' employment ended he had an unused accrued annual holiday entitlement of 25 days. This is based on an annual holiday entitlement of 24 days in 2008 (when he worked six days a week) and 20 days for 2009 to 2013 inclusive (when he worked five days per week). I accept that Mr Prins took the annual holidays set out in the schedule he filed with the Authority on 09 September 2013.

[7] Mr Prins' accrued annual holiday entitlement as at the date of termination is to be paid in accordance with s.24(2) of the Holidays Act 2003 (HA03). I find this amounts to \$3,385.

[8] Mr Prins is also entitled to be paid 8% of his total gross earnings for the three days from 25-27 March 2013 in accordance with s.25 HA03 (24 March being his annual leave anniversary date). I find this amounts to \$32.50.

[9] JAE is ordered to pay Mr Prins unpaid annual holiday pay of \$3,417.50 (being \$3,385 + \$32.50).

Public holidays

[10] Because Mr Prins had 25 days' accrued annual holiday when his employment ended on 27 March 2013, the Easter public holidays that year (Good Friday which fell on 29 March and Easter Monday which fell on 01 April) are captured because they would have occurred during his annual holidays had he taken his accrued annual holiday entitlement on termination.

[11] Both of these days would have otherwise been working days for Mr Prins so he is entitled to be paid for these two public holidays in accordance with ss.40 and 49 HA03.

[12] JAE Sales is ordered to pay Mr Prins \$270.80 for his outstanding public holiday entitlement (being 29 March and 01 April 2013).

Wage arrears

[13] I accept Mr Prins' evidence that he was not paid a week's pay for the period 21-27 March 2013. He was entitled to be paid for this period because his employment was not terminated until 27 March. Mr Prins was ready, willing and able to work – it was his employer's unilateral decision that he not attend work.

[14] JAE Sales is ordered to pay Mr Prins \$677 wage arrears for the last week of his employment.

Costs

[15] Mr Prins represented himself so there is no issue as to costs.

Disbursements

[16] JAE Sales is ordered to reimburse Mr Prins \$71.56 for his filing fee.

Summary

[17] JAE Sales is ordered within 28 days of the date of this determination to pay Mr Prins \$4,436.86 made up as follows:

- (a) \$3,417.50 outstanding annual holiday pay;
- (b) \$270.80 outstanding public holiday pay;
- (c) \$677 wage arrears;
- (d) \$71.56 to reimburse his filing fee.

Rachel Larmer
Member of the Employment Relations Authority