

IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

[2013] NZERA Auckland 173
5416240

BETWEEN	DAVID MYATT (LABOUR INSPECTOR) Applicant
AND	BALAJI SWEETS AND SNACKS NZ LIMITED Respondent

Member of Authority:	Eleanor Robinson
Representatives:	David Myatt in person for Applicant Satya Prakash, Advocate for Respondent
Investigation Meeting:	8 May 2013 at Auckland
Determination:	9 May 2013

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On 14 December 2012 the Labour Inspector, Mr David Myatt, served on the Respondent, Balaji Sweets and Snacks NZ Limited (Balaji), an Improvement Notice issued under s 223D of the Employment Relations Act 2000 (the Act).

[2] The Improvement Notice advised that Mr Myatt reasonably believed that Balaji had failed to comply with:

- **Section 50 Holidays Act 2003 – Employer must pay employee at least time and a half for working on a public holiday**
- **Section 56 Holidays Act 2003 – Alternative holiday must be provided if employee works on public holiday**

[3] The Improvement Notice required Balaji to take action to ensure compliance with the provisions detailed above by 10 January 2013, however Mr Myatt said that despite having repeatedly drawn the attention of both Mr Satya Prakash, director of Balaji, and Balaji's

accountant to the requirements of the Improvement Notice, neither party had furnished him with any evidence of the required remediation.

[4] The Labour Inspector is seeking an order under s 137(1)(a)(iiib) of the Act for compliance.

[5] The Labour Inspector also seeks a penalty under s 223F(1) of the Act.

[6] Balaji claims that it has complied with the Improvement Notice.

Background Facts

[7] In response to a complaint made by one of Balaji's former employees, Mr Myatt had investigated the wage, time and holiday records (the records) of Balaji and discovered that there was no information entered into the records to show that employees who had worked on public holidays had received their proper concomitant entitlements, pursuant to ss 50 and 56 of the Holidays Act 2003.

[8] Mr Myatt stated that information and guidance had been provided to Balaji in order that Balaji could rectify matters on a voluntary basis. However as there had been no response from Balaji, this had resulted in the imposition of enforcement measures, initially in the form of an Improvement Notice.

[9] The Improvement Notice had been signed by Mr Myatt and was dated 14 December 2012. Section 223D of the Act requires that such a notice state, among other things:

- The provision which the inspector believes the employer had not complied with;
- The inspector's reasons for that belief;
- The nature and extent of the failure to comply;
- The steps that could be taken in order to comply; and
- The date by which the employer must comply.

[10] Accordingly the Improvement Notice cited the failure to comply with ss. 50 and 56 of the Holidays Act 2003 as evidenced by the wage, time and holiday information investigated by Mr Myatt, and outlined the steps required to achieve compliance.

[11] As Mr Myatt had received no response from Balaji, he had made an application for a compliance order to the Authority.

[12] Balaji filed a Statement in Reply on 1 May 2013 in which it was claimed that Balaji had complied with the Improvement Notice, and provided evidence of its having done so in the form of wage, time and holiday records.

[13] During the Investigation Meeting, Mr Prakash and his accountant, Mr Chris Rei, explained that as Balaji's employees did not work on any statutory holidays, Balaji had not failed to provide to provide its employees with the correct minimum public holiday entitlements.

[14] Mr Prakash and Mr Rei had already provided a copy of the records with the Statement in Reply, but also provided the wage, time and holiday record book for inspection at the Investigation Meeting.

[15] Mr Myatt confirmed that he was satisfied that Balaji had complied with the requirement under the Improvement Notice to maintain accurate wage, time and holiday records, however he said that he would still require evidence of compliance with the requirement that the records:

... be accompanied by a note, endorsed by both employer and employee, to the effect that both parties agree that the wage, time and holiday records of the relevant employee are a true reflection of the pay the employee has received, and that the employee is satisfied that he or she has received all their correct entitlements, to date.

[16] Mr Prakash and Mr Rei pointed out that each employee of Balaji had initialled next to each entry relating to their record in the wage, time and holiday records, however agreed that individual letters would be provided to each employee and would be endorsed by both Balaji and the employee to substantiate agreement that the wage, time and holiday records were accurate.

[17] Mr Prakash and Mr Rei agreed to have the letters endorsed and to provide these to Mr Myatt by 13 May 2013, and in the event that an employee was absent and unable to sign by 13 May 2013, Balaji would advise Mt Myatt accordingly and provide as soon as possible thereafter.

Compliance Order

[18] I find partial compliance and make an order for full compliance as discussed above.

[19] Balaji is ordered to comply with the Improvement Notice by:

- providing letters confirming that each individual employee has received, and that the employee is satisfied that he or she has received, all their correct entitlements to date.
- Delivering the letters endorsed by both employer and employee to the Labour Inspector by 13 May 2013, or within a reasonable date, but no later than 7 days thereafter.

Penalty

[20] Taking into consideration the level of compliance achieved by Balaji and accepted by the Labour Inspector as fulfilling part of the Improvement Notice requirements, and the commitment to fully fulfil the Improvement Notice by the timely delivery and execution of the employee letters, I make no order for a penalty.

Remedies

[21] I further order that Mr Myatt, the Labour Inspector, be reimbursed for the Authority's filing fee in the sum of \$71.56.

Eleanor Robinson
Member of the Employment Relations Authority