

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2014] NZERA Auckland 434  
5517019

BETWEEN JAMES DENYER (LABOUR  
INSPECTOR)  
Applicant

AND BEAGLE BROTHERS  
LIMITED T/A GENJI  
PONSONBY  
Respondent

Member of Authority: Vicki Campbell  
Representatives: Applicant in Person  
No appearance for Respondent  
Investigation Meeting: 16 October 2014  
Determination: 23 October 2014

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**DETERMINATION OF THE AUTHORITY**

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- A. The respondent, Beagle Brothers Limited trading as Genji Ponsonby is ordered to pay the applicant the amount of \$6,587.56 gross for the use of Ms Junxia Dong within 14 days of the date of this determination.**
- B. The respondent, Beagle Brothers Limited trading as Genji Ponsonby is ordered to pay the applicant the amount of \$4,001.40 gross for the use of Mr Julius Manching within 14 days of the date of this determination.**
- C. The respondent, Beagle Brothers Limited trading as Genji Ponsonby is ordered to pay interest within 14 days of the date of this determination on the outstanding wages and holiday pay at**



**the rate of 5% per annum.**

**D. The respondent, Beagle Brothers Limited trading as Genji Ponsonby is ordered to pay total penalties of \$12,000 to the Crown within 14 days of the date of this determination.**

**E. The respondent, Beagle Brothers Limited trading as Genji Ponsonby is ordered to pay to the Labour Inspector, the filing fee of \$71.56 within 14 days of the date of this determination.**

### **Employment relationship problem**

[1] The applicant Labour Inspector has investigated problems in the employment relationships between the respondent, Beagle Brothers Limited trading as Genji Ponsonby (“Beagle Brothers”), and two employees, Ms Junxia Dong and Mr Julius Machning.

[2] Following an investigation the Inspector concluded the two complainants had not received their statutory entitlement to holiday pay, were owed wages, and that breaches of the Holidays Act 2003 had been committed.

[3] The respondent has not engaged with the Authority’s process at any point, it failed to file a statement in reply and failed to attend the Authority’s investigation meeting.

[4] Both the statement of problem and the notice of investigation meeting were served on the registered office and the actual premises from which the respondent operates its business. The notice of investigation meeting was also emailed to a known email address for Mr William Tan, the sole director and shareholder of the respondent.

[5] On the day of the investigation meeting the Authority Support Officer attempted to call Mr Tan on his mobile phone and left a message on the business phone reminding him of the investigation meeting.



[6] I am satisfied the Authority has done everything it can reasonably do to advise Beagle Brothers of the claims against it and to give it a proper opportunity to be heard in relation to the claims the Inspector makes against it.

[7] Mr Tan is not unknown to the Authority<sup>1</sup> and has previously failed to engage in the Authority's processes.

[8] In a recent Employment Court matter involving Mr Tan the Court commented on the vulnerability of migrant and would-be migrant workers and noted there had been an upswing in cases involving the failure to comply with minimum employment standards in relation to such workers.<sup>2</sup>

### **Orders sought**

[9] The Inspector seeks to recover the following from the respondent for the use of the two complainants:

- a) Payment of outstanding wages and annual holiday pay due Ms Dong in the amounts of \$2,280.00 plus \$4,307.56 gross respectively; and
- b) Payment of outstanding wages and annual holiday pay due Mr Manching in the amounts of \$540.00 gross plus \$3,461.40 gross respectively.
- c) Interest on the unpaid wages and holiday pay;
- d) Payment of penalties for failing to pay annual holiday pay; and
- e) Costs of the Authority's investigation.

### **Background**

[10] The complainants were employed by Beagle Brothers Limited trading as Genji Ponsonby, a Japanese Restaurant. Both complainants terminated their employment owing to problems arising over non-payment of wages and holiday pay.

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<sup>1</sup> *Yang v Tan* [2013] NZERA Auckland 208; *Lin Zhang v Tan Pacific Limited* [2014] NZERA Auckland 303; *Shubin Wang v Tan Pacific Limited* [2014] NZERA Auckland 347.

<sup>2</sup> *Tan v Yang & Zhang* [2014] NZEmpC 65.



[11] The matter was referred to the Inspector who attempted to speak with Mr Tan on several occasions without success. The Inspector then visited the workplace on 5 June 2014. Mr Tan was not present and so the Inspector served a notice on an employee demanding the production of wage, time and holiday records for the two employees.

[12] The wages, time and holiday records were not received and further attempts were made to speak with Mr Tan, again without success.

[13] Following his investigation the Inspector concluded that Ms Dong had worked for the respondent for approximately 72 weeks with a base salary of \$40,000.00 per annum. Further, that Ms Dong did not take any annual leave during her employment and was not paid wages for her final four weeks of employment.

[14] The Inspector also concluded that Mr Manching was employed for approximately one year on a salary of \$45,000.00 per annum, that Mr Manching did not take any annual leave during his employment and he was not paid his final weeks wages.

### **Determination**

#### ***Unpaid wages and holiday pay***

[15] I am satisfied the respondent has failed to pay wages and holiday pay to Ms Dong and Mr Manching.

[16] I order Beagle Brothers Limited trading as Genji Ponsonby to pay to the Inspector for the use of Ms Dong the amount of \$2,280.00 gross in outstanding wages plus \$4,307.56 gross in outstanding holiday pay; and

[17] I order Beagle Brothers Limited trading as Genji Ponsonby to pay to the Inspector for the use of Mr Manching the amount of \$540.00 gross in outstanding wages plus \$3,461.40 gross in outstanding holiday pay.

#### ***Interest***

[18] I award interest at the rate fixed by the Employment Relations Act of 5% per annum which is to be paid on the total amount of \$10,588.96. The interest is payable to the complainants in proportion to the sum recovered for each of them. Interest is to



be calculated from the date of this determination until such time as the amounts due have been paid.

**Penalties**

[19] The Inspector claims penalties pursuant to s 75(2) of the Holidays Act 2003 against the respondent for failing to pay holiday pay.

[20] I find the respondent has breached the Holidays Act 2003 by failing to pay holiday pay and the breaches should be punished with significant penalties imposed under the Holidays Act 2003.

[21] The maximum penalty for a breach of the Holidays Act 2003 is \$20,000 in the case of a company. This is a case that warrants the imposition of penalties which will also serve as a deterrent message.

[22] For the two breaches of the Holidays Act 2003 I consider total penalties of \$12,000 justifiable. The penalties are to be paid to the Crown.

**Costs**

[23] I order reimbursement by Beagle Brothers Limited trading as Genji Ponsonby of the filing fee of \$71.56.

[24] The sums awarded in this determination, including reimbursement of the filing fee, are to be paid by Beagle Brothers trading as Genji Ponsonby within 14 days of the date of this determination.

[25] To facilitate enforcement, a certificate of determination is to issue with this determination pursuant to Regulation 26 of the Employment Relations Authority Regulations 2000.

*Vicki Campbell*

Vicki Campbell  
Member of the Employment Relations Authority

