



he ceased trading in early 2014 due to various financial difficulties which included issues with statutory compliance raised by the Labour Inspectorate.

[5] It would be an understatement to say Mrs Ford's business practices are poor and the record keeping tardy. These practices have continued despite advice from her accountant that change is required and the rates she charged clients were insufficient and could not adequately cover her outgoings. As an aside it should be noted the accountant provided a schedule of the holiday pay owing and to whom.

[6] Mrs Ford's reaction to Mr Brown's investigation was a half-hearted attempt at some form of compliance via the belated issuing of employment agreements to four staff. She then gave up and ceased trading on 20 February 2015.

[7] During today's investigation meeting Mrs Ford admitted she has not paid holiday pay as alleged. She also admitted all the alleged breaches in respect to record keeping. That said she also states she is impecunious and there is no chance she will pay anything if so ordered.

[8] It follows the admissions that outstanding wages (holiday pay being wages) are payable and an order will be made accordingly.

[9] Turning to the penalty claims. Along with the failure to pay statutory entitlements (holiday pay) there are multiple breaches of statutory record keeping requirements all of which have been admitted.

[10] In support of the argument penalties be imposed Ms Milnes refers to the principles enunciated in *Tan v Yang & Zhang*.<sup>1</sup> She offers various arguments as to why application of those principles suggest significant penalties should be imposed in this instance.

[11] I agree with the submission Mrs Ford's failures are of the egregious type which warrant condemnation via the imposition of a penalty. They are serious, numerous and repeated. I also note they have occurred despite knowledge of the requirements elicited when her husband faced similar problems and the advice of her accountant.

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<sup>1</sup> [2014] NZEmpC 65

[12] That raises what is perhaps the most persuasive argument for the imposition of a penalty and that is deterrence. The message should be sent that it is improper to operate a business in such an inappropriate way and in the face of sage advice to amend practices. This was simply irresponsible.

[13] Against that I must balance Mrs Ford's advice she is impecunious. This was intimated prior to the investigation and Mrs Ford was advised that if she were to rely on such an argument and seek either/or instalment payments and the waiving of penalties she must provide supporting evidence. Despite that and a recognition she knew I was expecting evidence such as bank statements she produced nothing.

[14] While I suspect her claims of impecuniosity have some validity and this will influence my decision to impose a single global penalty and the level thereof one will, in the absence of any substantive supporting evidence of impecuniosity, be imposed.

[15] Having considered the evidence, the reckless way Mrs Ford conducted her business and the fact deterrence is the prime motive for a penalty in this instance I consider a global penalty of \$10,000 appropriate.

[16] Further reference should now be made to the impecuniosity claim. If, as she indicted, Mrs Ford ignores my orders I have no doubt a compliance action will follow. In that case Mrs Ford will have a second chance to evidence her impecuniosity. She is strongly advised to take advantage of it and produce the evidence.

[17] Ms Milnes also seeks costs on the basis I apply the normally accepted approach of a daily tariff<sup>2</sup> and the current rate of \$3,500.00. Given cost normally follow the event and in the absence of a contrary argument I accept the applicant should get a contribution toward its costs. I also accept the suggested approach is appropriate.

[18] Ms Milnes was present for approximately two hours or a third of day. That would see a contribution of some \$1,200.00 and an order will be made accordingly. To that I add reimbursement of the filing fee which I consider a given.

[19] For the above reasons I order Mele Ford make the following payments no later than 4.00pm Wednesday 2 December 2015:

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<sup>2</sup> *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808

- a. \$19,445.30 (nineteen thousand, four hundred and forty five dollars and thirty cents) gross being unpaid holiday pay. Payment is to be made to the Ministry of Business, Innovation and Employment for disbursement to Mrs Mele's ex-employees in the amounts listed on the schedule provided by her accountant; and
- b. A further \$10,000.00 (ten thousand dollars), being the penalties pursuant to the Employment Relations Act 2000. Payment is to be made to the Crown via the Ministry of Business, Innovation and Employment; and
- c. A further \$1,271.56 (one thousand, two hundred and seventy one dollars and fifty six cents) as a contribution towards MBIE's costs. Payment is to be made to the Ministry of Business, Innovation and Employment.

M B Loftus  
Member of the Employment Relations Authority