

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2017] NZERA Christchurch 108
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BETWEEN A LABOUR INSPECTOR OF
THE MINISTRY OF
BUSINESS, INNOVATION
AND EMPLOYMENT
Applicant

AND GOLDEN FLEECE
SHEEPSKIN
MANUFACTURING
COMPANY LIMITED
First Respondent

AND

DEREK BELL
Second Respondent

Member of Authority: Christine Hickey

Representatives: Jodi Ongley, Counsel for the Applicant
Derek Bell in person and as a representative of the First Respondent

Investigation meeting: 29 June 2017

Submissions received: At the investigation meeting from the parties

Determination: 30 June 2017

PRELIMINARY DETERMINATION OF THE AUTHORITY

Golden Fleece Sheepskin Manufacturing Company Limited and Derek Bell must comply with the Improvement Notice requirements set out in the Improvement Notice dated 29 August 2016. Specifically, by 4 pm, Thursday, 20 July 2017, the First and Second Respondents must provide to the Labour Inspector and to

the Authority the following documents:

- (i) A copy of a time and wages review undertaken for the employees Julie Derrick, Kevin Lawrence and Glenys Woolford demonstrating that they were paid for all hours worked as owed under section 6 of the Minimum Wage Act 1983. These records should be in one unified document that complies with the requirements of section 130 of the Employment Relations Act 2000 for a wages and time record.**
- (ii) Copies of calculations of final holiday pay and evidence to show the respondents paid former employees Elizabeth Davey, Bee (Peter) Chang, Noeline Wanstall and Bronwyn Townrow their annual holiday entitlements in line with the requirements of section 27 of the Holidays Act 2003.**

Employment relationship problem

[1] The parties took part in an investigation meeting on Thursday, 29 June 2017. I heard sworn evidence from Vikram Lakhera, the Labour Inspector, and Derek Bell, the Second Respondent and the director of the First Respondent.

[2] Ms Ongley, Counsel for the Labour Inspector, was of great assistance. At the end of the investigation meeting, which is adjourned part-heard, we had narrowed the issues and agreed on a path forward.

[3] I may need to make further directions once the Respondents have achieved compliance with the orders above. I remind the Respondents that compliance with orders set out above is likely to result in fewer and, perhaps, lower penalties.

[4] The Respondents should note that s 81 of the Holidays Act 2003 sets out the kind of holiday and leave record that an employer must keep.

[5] Section 4B of the Employment Relations Act 2000 also sets out an employer's obligation to keep records in sufficient detail to demonstrate it has complied with minimum entitlement provisions. This obligation is in addition to the other requirements to keep records set out in the Holidays Act and the Employment Relations Act.

What are the remaining issues to be resolved?

[6] At the investigation meeting, Ms Ongley withdrew the claim for a penalty against Mr Bell personally contained in the second application (lodged on 18 October 2016).

[7] Ms Ongley confirmed that the Labour Inspector no longer seeks compliance orders under the first application (lodged on 7 October 2016). The compliance orders made above have overtaken the need for those.

[8] Mr Bell acknowledged that he and the First Respondent breached s 229(1)(d) of the Employment Relations Act by failing to provide the Labour Inspector with the records sought in his email of 15 August 2016.

[9] The Labour Inspector now seeks:

- (i) A penalty for the breach of s 229(1)(d) of the Employment Relations Act 2000;
- (ii) Penalties for breaches of s 27 of the Holidays Act 2003 for Elizabeth Davey, Noeline Wanstall, Bee (Peter) Chang and Bronwyn Townrow. Mr Bell accepts there was a breach in relation to Noeline Wanstall but not in relation to the other employees.
- (iii) A penalty against the company for a failure to comply with the Improvement Notice. Mr Bell accepts there was a failure to comply.
- (iv) Penalties for breaches of the Minimum Wage Act 1983 in that Kevin Lawrence, Julie Derrick and Glenys Woolford were not paid at least the minimum wage for each hour worked in each relevant pay period. Mr Bell concedes that may have been the case for Kevin Lawrence but does not concede that was the case for the other employees.

- (v) A compliance order as set out above in paragraph [3]. Mr Bell says that he now has all the information he needs to comply and agreed that the timeframe of three weeks was reasonable.
- (vi) A penalty, under section 142X of the Employment Relations Act, against Mr Bell personally as a person involved in the breaches of failing to pay the employees in line with the Minimum Wage Act and the Holidays Act¹.

[10] Once the Respondents have complied with the direction in paragraph [5], I will give Ms Ongley the opportunity to make any further submissions, before I proceed to write my determination on the above issues.

[11] If I decide to impose penalties, I will seek submissions on the guidelines set out in *Boorsboom v Preet PVT Limited and Warrington Discount Tobacco Limited*² from Ms Ongley and give the Respondents the opportunity to respond, including supplying financial information on behalf of each Respondent and any application they may wish to make for payment of penalties by instalments.

Christine Hickey
Member of the Employment Relations Authority

¹ Under section 142W of the Employment Relations Act 2000.

² [2016] NZEmpC 143