

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2018] NZERA Auckland 183
3013552

BETWEEN A LABOUR INSPECTOR
 Applicant

A N D JUNO HOMES LIMITED
 First Respondent

 EXP BUILDERS LIMITED
 Second Respondent

Member of Authority: T G Tetitaha

Representatives: S Carr, Counsel for Applicant
 L Huang, Counsel for Respondents

Investigation Meeting: On the papers

Date of Determination: 8 June 2018

**CONSENT DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

[1] On 19 June 2017 the applicant lodged a Statement of Problem in the Authority. To resolve the problem the Labour Inspector sought an order against both respondents for compliance with the Improvement Notices issued under section 223D of the Employment Relations Act 2000 (the ERA) on 17 March 2017 (improvement Notices), penalties for failure to comply with the Improvement Notices, recovery of filing fee and costs.

[2] The respondents have not filed a Statement in Reply.

[3] The parties have reached the settlement agreement below and seek the Authority to record this by way of determination.

[4] The respondents accept the following breaches identified in paragraphs [4.1.1 — 4.4.4] of the Improvement Notices:

- a) A breach of section 81 of the Holidays Act 2003 ("HA") occurred that the employers did not keep holiday and leave records that comply with that Act;
- b) A breach of section 28 of the HA occurred in that the employers have paid annual holiday pay with employees' regular pay where employees are not on fixed term agreements or working on a basis that is so intermittent or irregular that it is impracticable for the employers to provide the employees with 4 weeks' annual holidays;
- c) A breach of section 49 of the HA has occurred in that the employers failed to pay employees for unworked public holidays when those public holidays fell on a day that would have been an otherwise working day for the employees concerned;
- d) A breach of section 55 of the HA has occurred in that the employers failed to pay employees for unworked public holidays in the pay that relates to the pay period in which the holiday occurs. The respondents accept the breaches of failing to comply with the Improvement Notices.

[5] The parties have agreed a penalty of \$5,000 against the first respondent Juno Homes Limited and a penalty of \$2,500 against the second respondent EXP Builders Limited for all breaches is appropriate.

[6] The following orders are now made by consent:

- a) There is an order for the payment of a penalty of \$5,000 by the first respondent Juno Homes Limited and a penalty of \$2,500 by the second respondent EXP Builders Limited to the Crown for failure to comply with the Improvement Notices.
- b) The respective penalty sum is to be paid by each respondent over a 12 month period, divided into 12 monthly installments, commencing from the date of the Authority's determination.
- c) There is an order for the respondents to make a contribution of \$571 56 towards the applicant's costs.
- d) There is an order for the respondents to comply with the Improvement Notices issued on 17 March 2017 within 20 working days from the date the order is issued by the Authority.

[7] This determination is enforceable under s137(1)(b) Employment Relations Act 2000.

T G Tetitaha
Member of the Employment Relations Authority