

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURAU ROHE**

[2019] NZERA 259  
3024855

	BETWEEN	WARREN PETER TOLSON Applicant
	AND	POTTER CONTRACTING WAIKATO TRUST First Respondent
	AND	TODD ROBERT POTTER Second Respondent
Member of Authority:	Anna Fitzgibbon	
Representatives:	Applicant in person Alistair van Schalkyk, counsel for the Respondent	
Investigation Meeting:	On the papers	
Date of Determination:	2 May 2019	

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The applicant, Mr Tolson says he was employed by the second respondent, Mr Todd Potter for over ten years and was not paid public holidays nor sick leave in accordance with the Holidays Act 2003. Mr Tolson seeks payment of holiday pay and compensation from the respondents, Potter Contracting Waikato Trust (the Trust) and Mr Potter.

[2] The Trust and Mr Potter say that they did not employ Mr Tolson, that his claims are without foundation and should be dismissed.

**Mr Tolson's employment**

[3] Mr Tolson has provided the Authority with an individual employment agreement stating that he commenced employment with Potter Contracting 2013 Limited (Potter Contracting) on 22 July 2013. Mr Tolson also provided the Authority with payslips showing that he was paid by Potter Contracting from June 2013 to June 2016.

**Potter Contracting goes into liquidation**

[4] The Authority has been provided with information confirming that on 29 June 2016, Potter Contracting was placed into liquidation by the High Court at Hamilton. Ms Wendy Ann Somerville and Mr Malcom Grant Hollis were appointed joint and several liquidators of Potter Contracting.

[5] The liquidators wrote to Mr Tolson on 29 June 2016 explaining the situation and informing him that any claims for wages, salaries, outstanding holiday pay would be afforded preferential status under the provisions of the Companies Act 1993. Mr Tolson was requested to notify the liquidators if he fell into that category.

**Application by Mr Tolson to the Authority**

[6] On 27 March 2018, Mr Tolson filed a statement of problem in the Authority making claims against Mr Tolson and Jetco Waikato Limited (Jetco). A statement in reply was filed disputing the claims and stating that Mr Potter was employed by Potter Contracting not by either of the respondents.

[7] On 26 October 2018, Mr Tolson filed a new claim in the Authority against Potter Contracting Waikato Trust and Mr Potter.

[8] At a telephone conference at which Mr Tolson and Mr van Schalkyk participated, it was agreed that the Authority investigate and determine the matter on the papers filed.

**Determination**

[9] On the documentation provided to the Authority, it is my view that Mr Tolson has not discharged the onus of establishing that the respondents in both claims filed in the Authority by him namely, Jetco, Mr Todd or the Trust employed him.

[10] On the evidence before the Authority, Mr Tolson was employed by Potter Contracting, a company which was placed into liquidation on 29 June 2016. Mr Tolson is required to seek leave from the High Court to pursue a claim against a company in liquidation. He has not.

[11] In the circumstances, Mr Tolson's claims in the Authority are dismissed for want of evidence.

**Costs**

[12] Costs shall lie where they fall.

**Anna Fitzgibbon**  
**Member of the Employment Relations Authority**