

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2019] NZERA 443
3046972

BETWEEN	A LABOUR INSPECTOR Applicant
AND	ORANA RESOURCES LIMITED First Respondent
AND	PAULA MIIMETUA KA Second Respondent
AND	ARIKI JARED GELL Third Respondent

Member of Authority:	M B Loftus
Representatives:	Claire English, counsel for the applicant Fred Hills, counsel for the first and second respondents No appearance on behalf of the third respondent
Investigation Meeting:	26 July 2019 at Wellington
Determination:	26 July 2019

ORAL DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This claim stems from the Inspectors' assertion *the first respondent employed ten employees to work as seasonal vineyard workers commencing Monday 8 January 2018. Nine employees of the first respondent are owed minimum wages and 10 employees of the first respondent are owed holiday pay, for work performed.*¹

¹ Agreed statement of facts filed on behalf of the applicant, the first respondent and the second respondent on 26 July at paragraph 1(a)

[2] The Inspector also asks penalties be imposed for a total of 19 breaches on each of the respondents with the claims in respect to the second and third respondents being based on an assertion they are persons involved.²

[3] *The first and second respondents accept that arrears should be paid to the affected employees as set out at paragraph 3.1 of the Statement of Problem and that the second and third respondents are personally liable for any amounts not paid by the first respondent.*³

[4] The parties that attended the investigation disagree about the question of penalties though they jointly ask determination of the issue be deferred.⁴

[5] Mr Gell's position is unknown as he has not taken any part in proceedings to date. Being satisfied service has occurred I simply say Mr Gell will not find exoneration for conduct the Inspector asserts warrants penalty by simply ignoring the claim. I choose to proceed and in doing so note Mr Gell now requires leave of the Authority to participate in the process.⁵

Orders

[6] Having discussed the situation with parties present and with their concurrence, I make the following orders:

- a. The first respondent, Orana Resources Limited, is to pay a total of \$9,741.48 (nine thousand, seven hundred and forty one dollars and forty eight cents) gross. Payment is to be made to the Labour Inspectors Trust Account no later than 4.00pm Friday 23 August 2019 and the Inspector will then be responsible for arranging disbursement to those she represents.
- b. Notwithstanding the first and second respondent's acceptance liability falls upon the second and third respondent should the above payment not be made issues arise from the fact Mr Gell is an undischarged bankrupt. Therefore no orders are made in this regard but leave is reserved for the applicant to return should non-payment occur.

² Sections 142W and 142X of the Employment Relations Act 2000

³ n 1 at paragraph 2

⁴ n 1 at paragraph 3

⁵ Regulation 8(3) of the Employment Relations Authority Regulations 2000

- c. The applicant is to file submissions with respect to the penalty claims on or before Monday 12 August 2019.
- d. No later than Friday 16 August the first and second respondents are to advise the Authority whether or not the applicants submissions are such they believe an investigation meeting is required or whether they consider the matter can be determined on the basis of reply submissions supported by affidavit evidence. If the later, the first and second respondents are to furnish their replies no later than Friday 23 August 2019 and the applicant has till Friday 6 September 2019 to provide a final response (if any).

[7] Costs are reserved.

M B Loftus
Member of the Employment Relations Authority