

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2023] NZERA 419  
3153769

BETWEEN A LABOUR INSPECTOR OF THE  
MINISTRY OF BUSINESS  
INNOVATION AND EMPLOYMENT  
Applicant

AND SLD AGRICULTURE LIMITED (IN  
LIQUIDATION)  
First Respondent

AND SCOTT DONALDSON  
Second Respondent

Member of Authority: Peter van Keulen

Representatives: Natasha Self, counsel for the Applicant  
No appearance for the Respondents

Investigation Meeting: On the papers

Submissions and Further Information Received: 17 April 2023 and 6 June 2023 from the Applicant  
Nothing received from the Respondents

Date of Determination: 4 August 2023

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**SECOND DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] The Labour Inspector alleges that SLD Agriculture Limited (in Liquidation) failed to pay Riana Grobbelaar, an employee, the minimum wage for all of the hours she worked and

failed to pay Petrus Grobbelaar, also an employee, and Mrs Grobbelaar their correct holiday pay entitlements.

[2] The Labour Inspector lodged claims in the Authority seeking payment of these minimum entitlements, which are employment standards.<sup>1</sup> The Labour Inspector also sought orders against Scott Donaldson, the director and shareholder of SLD Agriculture, on the basis that he was a person involved in the breaches of employment standards, pursuant to s 142W of the Employment Relations Act 2000 (the Act).

[3] SLD Agriculture and Mr Donaldson opposed the Labour Inspector's claims, asserting that SLD Agriculture was not the employer of Mr and Mrs Grobbelaar as alleged. I determined the issue of the identity of the employer as a preliminary matter and found that SLD Agriculture was the employer.<sup>2</sup>

[4] In the course of my investigation and determination of the preliminary issue SLD Agriculture went into liquidation. This meant the Labour Inspector could not proceed against SLD Agriculture but it could proceed with the preliminary issue for the purposes of establishing its claims against Mr Donaldson.<sup>3</sup>

### **The Authority's investigation**

[5] Having established that SLD Agriculture was the employer, the Labour Inspector now seeks to establish breaches of employment standards by SLD Agriculture and the status of Mr Donaldson as a person involved in the breaches.

[6] The Authority directed that it would determine these two aspects of the Labour Inspector's claims on the papers. Counsel for the Labour Inspector lodged submissions on 17

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<sup>1</sup> Section 5 of the Employment Relations Act 2000.

<sup>2</sup> *A Labour Inspector of the Ministry of Business Innovation and Employment v SLD Agriculture (in Liquidation) and Scott Donaldson* [2023] NZERA 22.

<sup>3</sup> *Lawton v Steel Pencil Holdings Limited (in Liquidation)* [2021] NZEmpC 199.

April 2023 and then updated matters in relation to Mr Donaldson's liability on 6 June 2023. Nothing has been received from SLD Agriculture or Mr Donaldson.

[7] As permitted by s 174E of the Act I have not recorded all the evidence and submissions received, in this determination. I have set out my findings of fact and law, then based on this I have expressed conclusions on issues as necessary to dispose of the matter, and then I have specified the orders made as a result.

### **Mr and Mrs Grobbelaar's employment with SLD Agriculture**

[8] SLD Agriculture was incorporated on 11 May 2018. It was placed into liquidation on 30 September 2022. Mr Donaldson was, and still is, the sole director and shareholder of SLD Agriculture.

[9] In late 2018 Mr Grobbelaar became aware that Mr Donaldson was looking for someone to run a farm he leased on the West Coast. The farm was located at 3782 State Highway, Ahaura, Totara Flat (the Farm).

[10] Mr and Mrs Grobbelaar had an informal interview with Mr Donaldson in relation to managing the Farm. Mr Donaldson initially only wanted one person to run the Farm but Mr and Mrs Grobbelaar negotiated for the role to be split between the two of them as they believed it would require two people to carry out the work.

[11] Mrs Grobbelaar started working on the Farm on 1 February 2019. Mrs Grobbelaar did not have an employment agreement when she commenced employment.

[12] Mr Grobbelaar required a visa to work in New Zealand and he only started working on the Farm on 17 May 2019, after his visa was granted.

[13] Mr Grobbelaar worked as the Herd Manager on the Farm and Mrs Grobbelaar worked as a Farm Assistant. Between the two of them, Mr and Mrs Grobbelaar ran the Farm,

undertaking general farm work such as milking, feeding, farm maintenance, and stock management.

**What hours did Mr and Mrs Grobbelaar work and what were they paid by SLD?**

[14] Based on the evidence from the preliminary matter, the Labour Inspector's report and counsel's submissions I am satisfied that:

- (a) Mrs Grobbelaar worked five days per week totalling 55 hours. This is the correct basis to calculate her minimum wage entitlements.
- (b) Mr Grobbelaar worked seven days per week, with this being likely to be more than 50 hours as set out in his employment agreement. However, 50 hours per week is the correct basis to calculate his minimum wage entitlements.
- (c) Mrs Grobbelaar's salary was \$30,000.00 and she was paid a total of \$58,287.21 (gross) during her employment.
- (d) Mr Grobbelaar's salary was \$63,600.00 and he was paid a total of \$60,202.28 (gross) during his employment.

**Did SLD Agriculture fail to pay the minimum wage for either Mr Grobbelaar or Mrs Grobbelaar?**

[15] Based on these figures Mr Grobbelaar was paid at least the minimum hourly wage for the hours he worked for SLD.

[16] Mrs Grobbelaar was not paid the minimum hourly wage for the hours she worked for SLD. The shortfall is \$24,955.29.

[17] In conclusion, SLD Agriculture breached s 6 of the Minimum Wage Act 1983 by not paying Mrs Grobbelaar at least the applicable minimum wage for the hours she worked whilst employed. This is a breach of an employment standard.

### **What holiday pay was paid by SLD Agriculture to Mr and Mrs Grobbelaar?**

[18] Mr and Mrs Grobbelaar were paid their annual holiday pay entitlement on a weekly basis at the rate of 8% of their weekly wage.

[19] This “pay as you go” basis for paying annual holiday entitlement is covered by s 28 of the Holidays Act 2003. In short an employer can pay annual holiday pay on this basis if the employee is on a fixed term employment arrangement or is a casual employee. Neither of these situations applied to Mr and Mrs Grobbelaar so it follows that SLD Agriculture paid their annual holiday pay incorrectly.

### **What holiday pay should have been paid by SLD Agriculture to Mr and Mrs Grobbelaar?**

[20] In calculating Mr and Mrs Grobbelaar’s annual holiday pay entitlement, the Labour Inspector rightly gives credit for holidays actually taken for which Mr and Mrs Grobbelaar were paid. After this, the Labour Inspector calculates the amount of annual holiday pay that Mr and Mrs Grobbelaar are entitled to as \$1,103.76 for Mr Grobbelaar and \$1,944.18 for Mrs Grobbelaar.

[21] I accept the Labour Inspector’s calculations and conclude that SLD Agriculture has breached s 25 of the Holidays Act 2003 by failing to pay Mr and Mrs Grobbelaar the amount of their annual holiday pay that had accrued but not been taken at the end of their employment; this is \$1,103.76 for Mr Grobbelaar and \$1,944.18 for Mrs Grobbelaar. These are breaches of employment standards.

### **What entitlements has SLD Agriculture failed to pay to Mr and Mrs Grobbelaar?**

[22] SLD Agriculture breached s 6 of the Minimum Wage Act 1983 by not paying Mrs Grobbelaar at least the applicable minimum wage for the hours she worked whilst employed; the shortfall is \$24,955.29.

[23] SLD Agriculture has breached s 25 of the Holidays Act 2003 by failing to pay Mr and Mrs Grobbelaar the correct amount of their annual holiday pay; the shortfall is \$1,103.76 for Mr Grobbelaar and \$1,944.18 for Mrs Grobbelaar.

[24] As outlined above, these failures are breaches of employment standards.

**Was Mr Donaldson a person involved in the breaches of employment standards by SLD Agriculture?**

[25] In order to establish that Mr Donaldson was a person involved in these breaches of employment standards by SLD Agriculture, pursuant to s 142W of the Act, I must be satisfied that he had knowledge of the essential facts that establish the breaches by SLD Agriculture.<sup>4</sup>

[26] In this regard the facts are:

- (a) Mr Donaldson was the sole shareholder and director of SLD Agriculture.
- (b) Mr Grobbelaar reported to Mr Donaldson on work relating to the management of the Farm and to the extent required he took instructions on work from Mr Donaldson. There were no other employees involved in the operation of the Farm through SLD Agriculture.
- (c) Expenses for the work done at the Farm were largely charged to an account for the Farm. Mr Grobbelaar says he simply referred to Mr Donaldson's account when charging items to it. Mr Grobbelaar provided Mr Donaldson with the income reports relating to milk sold.
- (d) Mr Donaldson signed the employment agreements for Mr and Mrs Grobbelaar personally. He also completed the immigration forms for Mr Grobbelaar and applied for the COVID-19 Consolidated Wage Subsidy on behalf of both Mr and Mrs Grobbelaar through SLD Agriculture.

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<sup>4</sup> *A Labour Inspector v Southern Taxis & Ors* [2021] NZCA 705.

- (e) Both Mr Grobbelaar and Mrs Grobbelaar were paid by SLD Agriculture with SLD Agriculture accounting for these payments, PAYE and ACC Levies to the IRD.

[27] Based on these facts it is safe to infer that Mr Donaldson managed the overall operations of the farm including the finances covering outgoings and expenditure as well as income, through SLD Agriculture. Mr Donaldson was essentially a CEO with overview of operations and finances.

[28] I am satisfied that Mr Donaldson must have had knowledge of the essential facts relating to the breaches of employment standards by SLD Agriculture (as set out in this determination). It follows that I conclude that he was a person involved in breaches of employment standards by SLD Agriculture.

[29] This finding means Mr Donaldson is liable for:

- (a) The amounts outstanding to Mr and Mrs Grobbelaar from the breaches of employment standards by SLD Agriculture if SLD Agriculture is unable to pay the amounts owed, pursuant to s 142Y of the Act.
- (b) Penalties for three breaches of employment standards by SLD Agriculture, pursuant to s 142X of the Act. These penalties are to be quantified at a later date.

## **Conclusion**

[30] SLD Agriculture has breached employment standards by failing to pay:

- (a) Mrs Grobbelaar the minimum hourly wage for the hours she worked for SLD, with the shortfall being \$24,955.29.

(b) Mr and Mrs Grobbelaar the correct amount of their annual holiday pay with the shortfall being \$1,103.76 for Mr Grobbelaar and \$1,944.18 for Mrs Grobbelaar.

[31] Mr Donaldson is a person involved in the breaches of employment standards by SLD Agriculture. Mr Donaldson is therefore liable for:

(a) The amounts outstanding to Mr and Mrs Grobbelaar from the breaches of employment standards by SLD Agriculture if SLD Agriculture is unable to pay the amounts owed, pursuant to s 142Y of the Act.

(b) Penalties, to be quantified at a later date, for three breaches of employment standards by SLD Agriculture, pursuant to s 142X of the Act.

### **Costs**

[32] Costs are reserved.

Peter van Keulen  
Member of the Employment Relations Authority