

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2023] NZERA 640
3124517

BETWEEN

A LABOUR INSPECTOR
Applicant

AND

VICTORIA JEON (aka JONG AI
PARK), JOSEPH JEON AND MISUN
LEEM, as trustees of JESUS AROMA
CHURCH TRUST
Respondents

Member of Authority: Philip Cheyne

Representatives: Greg La Hood, counsel for the Applicant
Seungmin Kang, counsel for the Respondent

Information Received: 9 May, 30 June, 27 July & 23 August 2023 from the
Applicant
11 May 2023 from the Respondent

Date of Determination: 31 October 2023

SECOND DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] In an earlier determination, orders were made requiring the respondents to pay arrears and repay premiums to the Labour Inspector for the use of Song Choi and to repay premiums to the Labour Inspector for the use of Andrew Jeon.¹ Penalties were fixed. I reserved for

¹ *A Labour Inspector v Jeon & oths* [2023] NZERA 175.

further calculation the arrears of wages and holiday pay due for Andrew Jeon. Costs were also reserved.

[2] I received revised calculations from the Labour Inspector.

[3] Counsel for the respondents advised the Authority that they had commenced proceedings in the Employment Court challenging the earlier determination and seeking to stay matters in the Authority and enforcement of the earlier determination. I deferred determining the reserved matters in the Authority, pending the Employment Court's consideration of the stay application.

[4] The Employment Court declined the stay application.² It was then appropriate to conclude the remaining matters in the Authority.

[5] My review of the calculations provided by the Labour Inspector caused me to raise several specific queries about how they applied the earlier findings. I also asked about the application of the Holidays Act 2003 on several points. I sought the Labour Inspector's response and left open an opportunity for counsel for the respondents to reply.

[6] I have now received revised calculations from the Labour Inspector supported by a memorandum, copied to counsel for the respondents. The respondents have not made any further submissions.

[7] This determination resolves the arrears of wages and holiday pay due to Andrew Jeon.

Minimum Wage Act 1983 Arrears

[8] The revised calculations show arrears under the Minimum Wages Act 1983 of \$25,905.81. The revised figure is based on the findings in the earlier determination. There will be an order for that amount.

Unworked Public Holidays

[9] There are 8 public holidays that fell on otherwise working days which Andrew Jeon did not work. Section 49 of the Holidays Act 2003 provides that an employer must pay the

² *Jeon and oths v A Labour Inspector* [2023] NZEmpC 114.

employee not less than the employee's relevant daily pay³ for those days. Relevant daily pay here is calculated under the employment agreement.

[10] The revised calculations reduce the fortnightly minimum rate by a day at the minimum rate for each unworked public holiday but add payment at the relevant daily pay (\$161.54) to test whether the employer met minimum entitlement provisions in the relevant pay period.

[11] I accept that there are five unworked public holidays where the employer cannot demonstrate compliance with the minimum entitlement to be paid at not less than the employee's relevant daily pay for each day. There will be an order for \$807.69 as a result.

Public Holidays Worked

[12] There are four public holidays which Andrew Jeon worked, in accordance with his employment agreement. Section 50 of the Holidays Act 2003 provides that an employer must pay the employee the greater of the proportion of relevant daily pay (less any penal rate) for the time worked plus half, or the proportion of relevant daily pay for the time worked plus half.

[13] The revised calculations reduce the fortnightly minimum rate by a day at the minimum rate for each public holiday worked but add payment at the relevant daily pay under the agreement for the time worked plus half. The total is then used to test whether the employer met minimum entitlement provisions in the relevant pay period.

[14] Based on the revised calculations, there are no arrears under s 50 of the Holidays Act 2003.

Alternative Holidays

[15] The four public holidays which Andrew Jeon worked all fell on days that were otherwise working days for him. Section 56 of the Holidays Act 2003 provides that an employee is entitled to an alternative holiday for working on that day as well as payment for working on the public holiday. The entitlement remains in force until the employee has taken the alternative holiday or been paid for it in accordance with the Act.

³ The Holidays Act 2003 requires use of average ordinary pay if higher.

[16] The revised calculations confirmed the original claim for payment of four alternative holidays at relevant daily pay. There will be an order for payment of \$646.15.

Payment for Annual Holidays

[17] Andrew Jeon worked for more than 12 months. Section 16 of the Holidays Act 2003 provided him with an entitlement to four weeks paid annual holidays, none of which were taken during the employment. Under s 24 of the Holidays Act 2003, the employer was required to pay out that entitlement at the higher of ordinary weekly pay or average weekly earnings in the 12 months immediately before the last pay period.

[18] Based on the revised calculations, I find that arrears of \$3,247.85 are proven. There will be an order for that amount.

Payment of 8% of Gross Earnings

[19] Andrew Jeon's employment ended before he became entitled to further annual holidays. Under s 25 of the Holidays Act 2003, the employer must pay Andrew Jeon 8% of his gross earning since he last became entitled to annual holidays, less amounts already paid in accordance with the Act.

[20] Based on the revised calculations, I find that arrears of \$1,849.36 are proven. There will be an order for that amount.

Orders

[21] Victoria Jeon (aka Jong AI Park), Joseph Jeon and Misun Leem must pay to the Labour Inspector within 28 days of the date of this determination, for the use of Andrew Jeon, arrears under the Minimum Wage Act 1983 and the Holidays Act 2003 totalling \$32,546.87.

[22] As I indicated, it is appropriate to order the payment of interest on the arrears. For simplicity, interest is calculated from the end of the employment (12 November 2019) until the date for payment in accordance with this determination.

[23] Victoria Jeon (aka Jong AI Park), Joseph Jeon and Misun Leem must pay to the Labour Inspector within 28 days of the date of this determination, for the use of Andrew Jeon, interest of \$3,542.96.

[24] Costs are reserved. The Labour Inspector may lodge and serve submissions in support of a claim for costs within 14 days of the date of this determination. The respondents may lodge and serve submissions in reply within a further fourteen days. I will then determine costs, with regard to the Authority's standard practice the respective submissions.

Philip Cheyne
Member of the Employment Relations Authority