

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN James Denyer, Labour Inspector (Applicant)

AND Alex Food Catering Limited (Respondent)

REPRESENTATIVES In person, for Applicant
Fauena Milo, for Respondent

MEMBER OF AUTHORITY Marija Urlich

INVESTIGATION MEETING 4 April 2007

DATE OF DETERMINATION 23 April 2007

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Labour Inspector Denyer has brought a recovery action for outstanding wages and holiday pay on behalf of Talisha Blount. Mr Denyer seeks the following orders from the Authority:

- (i) \$293.81 in outstanding wages;
- (ii) \$32.23 in outstanding holiday pay;
- (iii) Interest on that sum pursuant to section 84(2) Holidays Act 2003; and
- (iv) Recovery of \$70 filing fee.

[2] Mr Denyer's report, as attached to the statement of problem, shows Ms Blount was employed by Alex Food Catering Limited for 65.5 hours in September 2006. She worked as a waitress at the New Lynn RSA while Alex Food Catering Limited held the catering contract there. Ms Blount's employment came to an end when the RSA terminated its contract with Alex Food Catering Limited. Ms Blount received \$200 upon termination of her employment. The wages and holiday pay set out in paragraph [1] above remain outstanding.

[3] The respondent did not file a statement of reply. An investigation meeting notice was issued when attempts to set up a telephone conference call to discuss mediation and timetabling an investigation meeting proved fruitless. I am satisfied that the statement of problem and notice of investigation meeting were personally served on representatives of the respondent.

[4] Mr Milo attended the investigation meeting on behalf of the respondent company. He is a director of the respondent company. He told me that Ms Blount has not been paid the outstanding wages and holiday pay because "she didn't do a good job".

Determination

[5] I am satisfied, based on Mr Denyer's report and Mr Milo's evidence, that the sums set out in paragraph [1] are due and outstanding to Ms Blount. That an employee has not adequately completed duties, as asserted by Mr Milo, is not a basis to withhold payment of statutory minimum entitlements.

[6] Alex Food Catering Limited is to pay to the Labour Inspectorate, for the benefit of Talisha Blount, the following sums:

- (v) \$293.81 in outstanding wages; and**
- (vi) \$32.23 in outstanding holiday pay.**

[7] Alex Food Catering Limited is to pay interest on the outstanding holiday pay to be calculated at the rate of 7% until date of payment. This order is made pursuant to section 84(2) Holidays Act 2003.

[8] Alex Food Catering Limited is to reimburse the Labour Inspectorate the \$70 filing fee and I so order.

Marija Urlich

Member, Employment Relations Authority