

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2013] NZERA Wellington 90
5416598

BETWEEN STEPHEN FERGUSON and
 JUNE APATU and SHONA
 OTIMI and ALISON LYONS
 and SHONA CHURCHWOOD
 Applicants

AND TASLAN ENTERPRISES
 LIMITED
 Respondent

Member of Authority: P R Stapp

Representatives: Simon Mitchell, Counsel for the Applicants
 No appearance for the Respondent

Investigation Meeting: 23 July 2013 at Napier

Determination: 23 July 2013

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Alison Lyons, Shona Churchwood, Stephen Ferguson, June Apatu and Shona Otimi were employed as cleaners by Taslan Enterprises Limited (Taslan) until 31 March 2012.

[2] Taslan was engaged as a cleaning contractor by Titan Meat Company Limited (on behalf of Silver Fern Farms Limited). The applicants were cleaners working for Taslan at a meat processing plant operated by Silver Fern Farms (Silver Fern) at Takapau (Central Hawke's Bay). Silver Fern engaged a new contractor and the applicants who initially intended to transfer to that contractor ultimately declined offers of employment with the new contractor. They are each seeking their holiday pay and interest from Taslan, which has not paid them. Their claims are:

- (a) Alison Lyons: \$648.93 gross holiday pay;
- (b) Shona Churchwood: \$2,034.22 gross holiday pay;
- (c) Stephen Ferguson: \$613.30 gross holiday pay plus \$678
gross (annual leave);
- (d) June Apatu: \$1,622.43 gross holiday pay plus \$120
gross (one statutory holiday in lieu);
- (e) Shona Otimi: \$1,810.95 gross holiday pay.

The failure of the respondent to attend the investigation meeting

[3] The respondent failed to attend and/or be represented at the Authority's investigation meeting. The start of the investigation meeting was delayed to enable the support officer to make contact with Mr Donald Reuben Terence Parkinson, director. The support officer was not able to make any contact and there has been no good cause raised for the failure to attend today's investigation meeting.

[4] Pursuant to clause 12 of Schedule 2 of the Employment Relations Act 2000 (the Act), I proceeded, as no good cause has been shown by the respondent for failing to attend the Authority's investigation meeting. I have acted fully in the matter as if the respondent had duly attended or been represented.

[5] Furthermore, the respondent has been in breach of a Minute I issued dated 17 May 2013 in which I made an order for Taslan to provide the wage time and holiday records for each of the applicants by 6 June 2013 and to provide the employment agreements applying to each of the applicants by the same date.

[6] Instead the applicants have relied on their reconstruction of the amounts owing using pay slips.

Determination

[7] The applicants have endeavoured to do the best that they each can to reconstruct the amount they say each of them is owed by Taslan. I am relying on pay slips produced by each of the applicants.

[8] I accept each of the applicant's claims; and order Taslan Enterprises Limited to pay outstanding holiday pay and interest in the following sums to:

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|------|-------------------|---|
| i. | Alison Lyons: | \$648.93 gross holiday pay; and \$42.57 interest |
| ii. | Shona Churchwood: | \$2,034.22 gross holiday pay; and \$133.49 interest |
| iii. | Stephen Ferguson: | \$613.30 gross holiday pay; and \$678.00 gross annual leave; and \$84.74 interest on total |
| iv. | June Apatu: | \$1,622.43 gross holiday pay; and \$120 statutory holiday in lieu; and \$114.33 interest on total |
| v. | Shona Otimi: | \$1,810.95 gross holiday pay; and \$118.83 interest. |

Orders of the Authority

[9] I order Taslan Enterprises Limited to pay these sums accordingly to each of the applicants.

Costs

[10] The applicants have incurred costs in making their claims for money to which they were entitled. Their union, (the New Zealand Meat Workers and Related Trades Union Inc), which is standing behind them, has instructed solicitors, who instructed Mr Mitchell to prepare for and attend today's investigation meeting.

[11] I order Taslan Enterprises Limited, based on the notional daily tariff for a short investigation meeting of about one hour including the delayed start, to pay \$1,500 for the use of the applicants and their union, care of Mr Mitchell's instructing lawyers, Oakley Moran. In addition, Taslan Enterprises Limited is to pay the filing fee of \$71.56. The sum of \$1,500 and \$71.56 are to be paid to Oakley Moran's trust account for the use of the applicants and their union.

P R Stapp
Member of the Employment Relations Authority