

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 214/10
5303113

BETWEEN TAE WOOK HA
 Applicant

A N D IFF 21 (NZ) LIMITED
 Respondent

Member of Authority: James Crichton

Representatives: Jong Sun Lim, Counsel for applicant
 Craig Mundy-Smith and Graeme Riach, Counsel for
 respondent

Investigation Meeting: 3 September 2010 at Christchurch

Date of Determination: 23 November 2010

FIRST DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Mr Ha) claims to have been unjustifiably dismissed from his employment as a cleaner by the respondent (IFF) and to be owed holiday pay by IFF. Those claims are both resisted by IFF.

[2] The process of determining Mr Ha's employment relationship problem has been somewhat extended by Mr Ha's financial problems which have precluded him from continuing to meet legal fees of his counsel. I have given Mr Ha some latitude to raise the necessary funds so that his counsel can be paid outstanding fees and, in particular, preparations for final submissions can be undertaken by both representatives.

[3] However, in the meantime, the issue of outstanding holiday pay continues to run on without resolution. Since the investigation meeting, the Authority has been advised that Mr Ha engaged with a Labour Inspector to pursue his holiday pay and

that the Labour Inspector had formed a view about what was due and owing. The Labour Inspector's correspondence has now been made available to the Authority.

[4] On two separate occasions, 20 October 2010 and 9 November 2010, the Authority referred the matter of outstanding holiday pay to the parties' representatives and, in particular, sought an urgent response from IFF on the matter.

[5] Once the Labour Inspector's correspondence became available to the Authority, that correspondence and the calculation made by the Labour Inspector were specifically referred to by the Authority in seeking comment from IFF. No response whatever has been received.

[6] Accordingly, by notice of direction dated 19 November 2010, the Authority indicated to the parties its intention, without further advice, to determine the matter of holiday pay on the basis of the Labour Inspector's calculation.

[7] This determination deals exclusively with the holiday pay issue; the other matters concerned with Mr Ha's employment relationship problem will be dealt with in a subsequent determination of the Authority.

The available evidence

[8] Of necessity, the only evidence available to the Authority to determine this matter is the evidence of Mr Ha and of course the assessment made by the Labour Inspector. Mr Ha's evidence is understandably partial. Furthermore, his claim for holiday pay is not perhaps as clear as it might be. However, the view of the Labour Inspector is, I am satisfied, able to be relied upon although the Labour Inspector was in the same position as the Authority in being unable to obtain any engagement from IFF.

[9] I have already detailed the extent to which the Authority has endeavoured to obtain some engagement from IFF in respect of the holiday pay matter. The Labour Inspector had similar difficulties. He wrote to IFF first on 13 May 2010 raising the issue. There were subsequent letters on 14 June 2010 and 7 July 2010 and it seems that the only contact from IFF was a telephone call on 22 June 2010 from Mr Song Han Kim, a director of IFF who gave evidence before the Authority. Despite that telephone call from Mr Kim undertaking to deal with the holiday pay question, in fact IFF has taken no further steps so far as can be ascertained.

[10] Certainly, that was the Labour Inspector's view as he wrote again to IFF on 2 August 2010 in which he confirms that the amount owing in holiday pay to Mr Ha is \$5,422.50 gross. Also in that letter, the Labour Inspector indicates that if that sum is not paid, proceedings will issue against IFF in the Employment Relations Authority to recover that sum.

Determination

[11] Having become satisfied that IFF has had ample opportunity to respond to either the Labour Inspector or the Authority, or both, in respect of the issue of unpaid holiday pay, I am satisfied that any further delay is an unreasonable prejudice on Mr Ha's legal entitlement and I now direct that IFF is to pay to Mr Ha his unpaid holiday pay, the gross sum of \$5,422.50.

[12] The question of interest arises. IFF is to pay interest on the above sum at the rate of 4.5% for the period from 3 December 2009 down to the date payment is effected: Schedule 2 Clause 11(1) Employment Relations Act applied.

Costs

[13] Costs are reserved.

James Crichton
Member of the Employment Relations Authority