

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Mark Anthony Horn (Labour Inspector)  
(Applicant)

**AND** Leggett Family Partnership  
(Respondent)

**REPRESENTATIVES** Mark Horn for Applicant  
Cyril Leggett for Respondent

**MEMBER OF AUTHORITY** Vicki Campbell

**INVESTIGATION MEETING** 22 June 2006

**DATE OF DETERMINATION** 27 June 2006

DETERMINATION OF THE AUTHORITY

- [1] Mr Mark Horn, a Labour Inspector with the Department of Labour, claims Ms Raelene Izod is owed \$2,916.68 for holiday pay. In addition to the payment of the holiday pay Mr Horn seeks payment of interest on the sum and costs.
- [2] Ms Izod and her husband were both employed by Mr Leggett on 1 July 2000. In August 2000, Ms Izod's husband left but Ms Izod remained at the farm. Ms Izod was employed to carry out the milking. It was common ground that the period April to June inclusive each year, there is no milking to be undertaken as the cows are dry and with the odd exception, do not begin calving until the beginning of July. Ms Izod told me that April and May of each year was her holiday period and that during June she would do a little bit of work getting the farm ready for calving.
- [3] In October 2000 and in accordance with advice received from his accountant, Mr Leggett invited Ms Izod and her daughter to move into the family home. Mr Leggett's sister had recently passed away after a battle with cancer and Mr Leggett wanted to maximise the opportunity of renting the farm cottage. With Ms Izod in the family home, the cottage would be completely vacant and Mr Leggett could rent it.
- [4] It was common ground that from October to November 2000 Ms Izod paid \$80.00 as board and lodging. This money was paid as a deduction from her pay each week. In November 2000 Mr Leggett and Ms Izod agreed that in return for her board and

lodging she would cook Mr Leggett's meals for him. From November 2000, Ms Izod was no longer required to pay board and lodging and consequently received the \$80.00 per week as part of her wages.

- [5] In about November 2001 Ms Izod and Mr Leggett began a personal relationship which culminated in their marriage on 1 May 2004. There is no dispute that the employment relationship came to an end at the time of the marriage. Unfortunately the marriage did not last and the couple separated during 2004.
- [6] Ms Izod says that during her employment relationship she worked many of the public holidays and has never received a day off in lieu – nor did she receive payment of holiday pay at the termination of her employment on 1 May 2004.
- [7] In a letter dated 9 December 2005, Mr Horn advised Mr Leggett that following his investigation into Ms Izod's claims he had determined that Ms Izod was entitled to outstanding holiday pay of \$306.84 and payment for days in lieu for working on public holidays of \$2,609.84.
- [8] In response Mr Leggett says that while Ms Izod was employed she would take up to four hours off work each day during which time she would drive her daughter to school and pick her up and would go to the gym. Mr Leggett also said Ms Izod took her daughter swimming during the working day for about 20 weeks. He says he never deducted anything from her wages for the time she spent doing these things.
- [9] Mr Leggett also outlined dates when he had paid for Ms Izod and her daughter to travel to Australia and that while she was away on holiday she would continue to receive her usual pay. He says that this applied during the off-season, between April and June, as well.
- [10] It was common ground that Ms Izod and Mr Leggett took a P & O Cruise in 2002. Mr Leggett told me Ms Izod had never contributed to the expenses for this cruise.

*Entitlement to holiday pay*

- [11] Having reviewed the claim for annual leave I am satisfied that Ms Izod has received her full entitlement to annual holidays. Ms Izod received payment for the entire period of her employment, including during the off-season when there was no milking to be done. I have concluded that the non-working time covers the period of April and May, approximately 8 weeks.

[12] There is no dispute that Ms Izod's entitlement to annual leave was the statutory three weeks at the end of each year of employment. During the entire period of her employment Ms Izod became entitled to 63 days annual leave (3 years entitlement of 21 days being three weeks of seven days per week) plus a payment of 6% at the end of her employment. The records show that by agreement Ms Izod, during the April and May periods of each year, was absent from the farm, on holiday for 77 days.

[13] Ms Izod's entitlement to paid annual holidays for the period of her employment has been calculated as being \$5,595.20. From the wages records provided to the Authority I have calculated that Ms Izod received payments totalling \$15315.92 for the periods during April and May of each year of her employment, when she did not have to work and which she acknowledged to me at the investigation meeting was her "...holiday time".

[14] In *Drake Personnel (New Zealand) Ltd v Taylor* [1996] 1 ERNZ 324 the Court of Appeal had this to say about payment of holiday pay:

It is true that the payment required by s 21 does not become due and payable until the employment is terminated. The obligation, however, is created as soon as the qualifying period of employment starts to run. At any stage during that period the employee will have an entitlement to be paid, on termination, an amount which can be calculated...there is no reason in principle why an obligation to pay money at some future date cannot be discharged by earlier payment.

[15] The Court went on to say:

...the Act does not require, by implication or otherwise, that an employee be paid a second time if they have already been paid in anticipation.

[16] I am satisfied that Ms Izod has received her full entitlement to holiday pay during her employment and therefore Mr Horn's claim for unpaid holiday pay must fail.

*Entitlement to a day off in lieu of working public holidays*

[17] This claim totals 38 days on which Ms Izod claims to have worked and for which she is entitled to a day off in lieu which she has not been given and for which she has not been paid.

[18] As Ms Izod was employed at the time the Holidays Act 2003 came into force this recovery action is subject to the provisions of that Act. Most of the days in lieu have been accumulated under the auspices of the 1981 Act. Under that Act employees who worked on a public holiday were, through common law obligations, entitled to receive a paid day off in lieu of the holiday. This obligation has now been codified in the 2003 statute.

- [19] The Transitional provisions of the 2003 Act, as it relates to accumulated days in lieu for public holidays worked, requires an employer to treat such holidays as being an "alternative holiday". The 2003 Act requires that the alternative holiday be taken on a day agreed to by the employer and employee and must be on a day that would otherwise be a working day for the employee.
- [20] There was no written employment agreement between the parties. There is also no evidence that Mr Leggett and Ms Izod agreed that the 8 weeks paid during Ms Izod's holiday period of April and May of each year would constitute payment for alternative holidays accrued and/or earned by Ms Izod. It is doubtful that such an agreement would meet the requirements of the Act in any event as the period April to May was not time during which Ms Izod would otherwise work (see *New Zealand Professional Firefighters Union v the Chief Executive of the New Zealand Fire Service* [2005] ERNZ 645).
- [21] Ms Izod worked 7 days a week during the season. Taking into account that Ms Izod would not otherwise have been working on any public holidays falling between the beginning of April and the end of May, I have calculated Ms Izod's entitlement to days off in lieu to be 31 days.
- [22] I find that Ms Izod is entitled to 31 alternative days to be paid at the relevant daily pay rate of \$68.68 per day.
- [23] Mr Leggett has asked the Authority to off-set any money due to Ms Izod by the amount paid on Ms Izod's share of the P & O Cruise in 2002 and the unpaid board and lodging of \$80.00 per week.
- [24] The P & O Cruise was undertaken by Mr Leggett and Ms Izod in their capacity as a couple in a personal relationship. There was no evidence that Ms Izod was contractually bound to contribute to her share of the cruise or that it was taken as part of the employment relationship. In relation to the rent issues, I am satisfied that in November 2001 Mr Leggett and Ms Izod agreed to a variation of the employment agreement which allowed her to stay in the family home for free in return for cooking Mr Leggett's meals.

**The Leggett Family Partnership is ordered to pay to the Labour Inspector the sum of the sum of \$2,129.08 gross. This amount is to be paid within 28 days of the date of this determination.**

#### **Costs**

- [1] This application required a filing fee of \$70.00. It is appropriate that the respondent reimburse the fee.

**The Leggett Family Partnership is ordered to pay to the Hamilton office of the Department of Labour the sum of \$70.00, within 28 days of the date of this determination.**

Vicki Campbell  
Member of Employment Relations Authority