

Wages claim

[4] Mr How was employed by Mr Jim Campin in December 1999 as a general groom. Mr How left his employment in September 2007. In mid 2008 Mr How made a complaint to the Department of Labour that he had not been paid at the applicable minimum rate of pay throughout his employment.

[5] After investigating the complaint the Labour Inspector (Mr Alan Reid) formed an opinion which he reduced to writing, that Mr How had worked on average 50.50 hours per week and that Mr How was owed \$2,765.38 for wages paid in 2002, 2006 and 2007 which had been paid at less than the applicable minimum rate of pay. The Labour Inspector was satisfied that the minimum wage requirements had been met for all other years.

[6] Chequers Stud say Mr How did not work 50.5 hours each week, that it was more like 45 hours. At the investigation meeting Mr Campin produced to the Authority a copy of a written employment agreement dated June 2002. I am satisfied this agreement was provided to Mr How for his perusal, but has never been signed by him. That agreement records the hours of work to be from 6.30am to 5.00pm six days per week. I am satisfied Mr How worked those hours each day Monday to Friday inclusive and worked four hours each Saturday with the exception that during winter months Mr How started later than 6.30am due to it being too dark. The agreement does not support Chequers Stud's position that Mr How worked only 45 hours each week.

[7] The Labour Inspector used a base of 50.50 hours to calculate the outstanding minimum wage payment due to Mr How. This was accepted by Mr How and forms the basis of his claim before the Authority and I am inclined to do likewise.

[8] I am satisfied Mr How has made out his claim and is entitled to be paid \$2,765.38 gross as arrears of wages for wages paid to him at less than the applicable minimum rate of pay.

Annual holidays

[9] Mr How claims \$988.05 for annual holidays not taken during his employment. In his report the Labour Inspector split the annual leave calculations into two periods.

Period 1 covered the holidays due to Mr How at the end of each year 2004, 2005 and 2006. Period 2 covered the part year worked from December 2006 to September 2007 inclusive.

[10] No wages and time records were kept for Mr How during his employment. Mr Campin says this is because he was on a fixed salary and therefore no calculation as to wages due each week was required. However, a notebook was used at the worksite to record details of days off and that record has been produced for the Authority. I note that this book was not made available to the Labour Inspector in the course of his investigation. Mr How acknowledged at the investigation meeting that he recognised the book and that it was used for recording days taken off on holiday and other leave.

[11] With the aid of the report from the Labour Inspector together with the notebook where days off have been recorded I am satisfied Mr How took 60 days annual leave during the period January 2004 to September 2007. This is equivalent to 10 weeks annual leave. Mr How was entitled to three weeks annual leave for each complete year of service. For the period of calculation that means he was entitled to nine weeks annual leave.

[12] As Mr How did not work for a further complete year he was entitled to receive 8% of his gross earnings for the period December 2006 to September 2007 which the Labour Inspector has calculated as \$1,821.00.

[13] I have concluded that Mr How used his annual leave entitlement in its entirety from 1 January 2004 until September 2007 and indeed used an extra week's leave to which he had not become entitled. The payment for that week, therefore, must be deducted from the 8% calculation as leave taken in advance of entitlement.

[14] Mr How's outstanding entitlement to holiday pay as at the date of his termination was \$1,321.00. Following termination Mr How received three payments of \$500 for holiday pay. The effect of these payments is that Mr How has been paid \$179.00 over and above his entitlement. It follows that no further orders will be made with regard to holiday pay.

Public holidays

[15] Acting on instructions from Mr How, the Labour Inspector calculated an outstanding balance of 16 days in lieu for which Mr How worked on public holidays but was not paid out for the days in lieu when his employment ended.

[16] With no evidence to the contrary from Chequers Stud I find this claim has been made out and Mr How is entitled to payment of 16 days in lieu for working on public holidays between 2002 and 2007 in the sum of \$1,333.28.

Summary

[17] **Mark and Chris Campin trading as Chequers Stud are ordered to pay to Mr How the sum of \$4,098.66 gross within 28 days of the date of this determination** and made up as follows:

Minimum wage owed:	\$2,765.38
Alternative holidays owed:	\$1,333.28

Penalty

[18] Three working days before the investigation meeting into Mr How's claim took place, he lodged a further claim for a penalty against Chequers Stud for failure to provide wage and time records.

[19] A claim for a penalty must be commenced within 12 months after the cause of action first became, or ought to have become known, to the person bringing the action.¹

[20] The respondents failed to produce wage and time records at the time the Labour Inspector was investigating Mr How's complaint, albeit he had requested them. Mr How was aware that the respondent had failed to produce the records at that time which was June 2008 which means the 12 months expired in June 2009. The remedy of a penalty is therefore not available to the applicant.

¹ Employment Relations Act 2000 s.135(5).

Interest

[21] The Authority has discretion to award interest pursuant to clause 11 of Schedule 2 of the Employment Relations Act on outstanding wages and holiday pay. I am satisfied this is a case that warrants an award of interest for the period Mr How has been denied what is owed to him. The interest is to be calculated from the date of the Labour Inspector's letter.

Mark and Chris Campin trading as Chequers Stud is ordered to pay interest on the outstanding wages and holiday pay at the rate of 4.8% commencing on 19 June 2008 until the amount is paid.

Costs

[22] Costs are reserved. The parties are encouraged to resolve the question of costs between them. If they fail to reach agreement on the matter of costs, Mr How may file and serve a memorandum as to costs within 28 days of the date of this determination. I will not consider any application outside that timeframe.

Vicki Campbell
Member of Employment Relations Authority