

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA34/09
5135918

BETWEEN	JO-ANN DUFF, LABOUR INSPECTOR Applicant
AND	LOOSE ENDS LIMITED Respondent

Member of Authority: James Crichton

Representatives: Jo-Ann Duff in person
Dick Knapp, for Respondent

Investigation Meeting: On the papers

Determination: 23 March 2009

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant Labour Inspector (Ms Duff) seeks penalties for non-compliance with the requirements of the Labour Inspector made pursuant to s.229(1)(d) of the Employment Relations Act 2000 and s.82 of the Holidays Act 2003 and compliance orders requiring the respondent, Loose Ends Limited (the employer) to supply copies of all time, wage and holiday records for employees, Julie Hight and Sheryn Clarke.

[2] The employer resists the claim on the basis that it has complied with the substance and the intent of the requirements of the two statutory provisions relied upon by Ms Duff. In essence, the employer says that by telling Ms Duff that the records she seeks are available for inspection at the premises of the employer, they have complied with the law.

Issues

[3] The following questions need to be answered:

- (a) Has the employer complied with the law?
- (b) Ought penalties be levied?

Has the employer complied with the law?

[4] Pursuant to both the Holidays Act 2003 and the Employment Relations Act 2000, a Labour Inspector may make an election to either inspect the records of an employer *in situ* or require copies of the relevant records to be provided.

[5] Section 229 of the Employment Relations Act 2000 provides generally for the powers of labour inspectors pursuant to the Act. Subsection (1)(c) of the Act entitles a labour inspector to require the production of wage and time records so that they may be inspected and copied and the succeeding subsection (d) confers the power to *require any employer to supply to the labour inspector a copy of the wages and time records or holiday and leave record or employment agreement or both of any employee of that employer.*

[6] Pursuant to the Holidays Act 2003, a labour inspector is one of a number of parties who may enforce the statute: s.74(1)(e). Pursuant to s.78 of the same statute, a labour inspector is imbued with the powers conferred by the Holidays Act itself and *... all the powers that a labour inspector has under the Employment Relations Act 2000.*

[7] In any event, s.82 of the Holidays Act 2003 at subsection (1) makes it clear that a number of parties, including a labour inspector, *may request an employer to provide access to, or a copy of, ... information in the holiday and leave record relating to an employee*

[8] It is beyond doubt then that the Labour Inspector has the power to make the election of either inspecting the records on site or of requiring them to be copied and produced to the Labour Inspector off site. It is clear that that power exists both in the Employment Relations Act 2000 and in the Holidays Act.

[9] In the present case, Ms Duff has clearly signalled, by numerous items of correspondence, that she wishes the information to be provided to her. She is entitled to do that and I am satisfied that her request could not have been clearer.

[10] For the employer to claim that, by offering Ms Duff the opportunity to inspect the records in situ, it has complied with its legal obligations is simply nonsensical. Had the employer been asked for access to the records, its attitude would have been compliant, but that is not the request that it received.

[11] It follows that I am satisfied that there has been no compliance with the law by the employer. Its refusal to comply has, in my opinion, been sustained and wilful.

Ought penalties be levied?

[12] I am satisfied that this is a case where penalties ought to apply. The employer could easily have provided the information required by Ms Duff but chose instead to seek to make a nice point totally devoid of any merit.

[13] As a general principle, it is important that employers comply with the reasonable, legitimate and legal requests of labour inspectors whose statutory function is impeded by a failure of a small number of employers to fulfil their own statutory obligations.

Determination

[14] I make the following orders:

- (a) A compliance order pursuant to the Authority's statutory power requiring the employer's compliance with the Labour Inspector's requirements in respect of s.229(1)(e) of the Employment Relations Act 2000 and s.82 of the Holidays Act 2003; and
- (b) A penalty to be paid to the Crown in the sum of \$2,500 for the employer's non-compliance with s.221(1)(d) of the Employment Relations Act 2000; and
- (c) A penalty to be paid to the Crown in the sum of \$2,500 for the employer's non-compliance with s.82 of the Holidays Act 2003.

Costs

[15] Costs are to lie where they fall.

James Crichton
Member of the Employment Relations Authority