

[4] It was accepted that when Ms Kearns left on 22 July 2008 she had taken no holidays since she had become a shareholder and director. Ms Kearns therefore claims payment in lieu of having taken holidays.

[5] Even if Mr Heald and Ms Kearns had agreed that she was not entitled to holiday pay as opposed to holidays, this would have been contrary to s.6 of the Holidays Act 2003, as it would have restricted her entitlements under the Act, and therefore it would have been of no effect in law.

[6] Either way therefore, Ms Kearns was entitled to be paid holiday pay when she left the cafe. There is no dispute that the sum that would be owing in these circumstances is \$5,880.00 gross. Ms Kearns is also entitled to interest on that sum at 6%, totalling \$277.41 gross, being for 287 days out of 365.

[7] Mr Ratner also submitted that \$1,500 as a contribution to costs, plus \$70 for the filing fee, should also be awarded in favour of Ms Kearns. This was a straight forward matter which took less than one hour to investigate. The sums in dispute have never been in doubt. In all the circumstances I consider that an appropriate award of costs is \$750.

[8] I therefore order the respondent, Miramar Foodco. Ltd, to pay to the applicant, Joanne Maria Kearns the following sums:

- \$5,880 gross in unpaid holiday pay;
- \$277.41 gross in interest;
- \$750 in costs; and
- \$70 in expenses.

G J Wood
Member of the Employment Relations Authority