

[4] There has been no statement in reply lodged by Broadbat with the Authority. The director of Broadbat is Gregory Keith Thomas. The registered office of Broadbat, which is also its address for service, is 3 Myrtle Crescent, Wellington.

[5] I am satisfied that the respondent company was served with the statement of problem at 3 Myrtle Crescent, Wellington by courier post in July 2007. Broadbat took no steps at that time.

[6] A support officer from the Authority wrote to Broadbat, on 14 August 2007 at its registered office. The letter was for the attention of Mr Thomas. Broadbat was advised that the date and time of a telephone conference to be held with the Authority was Monday 3 September 2007 at 10.30am. The support officer advised in that letter that she would telephone the company on a particular number unless a further number was provided. There was no response to that letter and no alternative telephone number was provided.

[7] On Monday 3 September 2007 Mr Thomas could not be contacted when the telephone conference was about to begin. The Authority proceeded in the absence of attendance from anyone on behalf of Broadbat to set a date for an investigation meeting in Dunedin on Tuesday 27 November 2007 at 10.30am.

[8] On 6 September 2007 at 12.48pm the directions notice and notice of investigation meeting were delivered to Broadbat at its registered office and signed for by a Lyn Prorok. At the investigation meeting I was able to clarify with Mr Henning that he had previously spoken to Ms Prorok about whether letters he had sent to the company earlier had been received. Mr Henning understood Ms Prorok had an administrative role at Broadbat.

[9] There was no appearance at the investigation meeting on behalf of Broadbat.

[10] I am satisfied the company was served with the statement of problem, advice of a telephone conference with the Authority, notice of directions and notice of investigation meeting. Broadbat failed to take any steps whatsoever in terms of this application. In those circumstances I proceeded to hear evidence from Mr Henning on 27 November 2007 at the investigation meeting.

The issues

[11] The issues for the Authority are:

- Is Broadbat Limited the correct respondent;
- If Broadbat is the respondent what are its obligations under the Holidays Act 2003 and Employment Relations Act 2000 with respect to provision of wage and time, holiday and leave records, and holiday pay;
- What did the Labour Inspector require from Broadbat with respect to each of the seven former and/or current employees and what was provided with respect to each former and/or current employees;
- If there has been breach of obligations by Broadbat under the Employment Relations Act 2000 and the Holidays Act 2003 should penalties be imposed and orders made where holiday pay has been able to be calculated;
- What is the Authorities jurisdiction in terms of an order for compliance in these circumstances and should there be compliance orders made?

Is Broadbat Limited the correct identify of the respondent?

[12] The seven employees named in para. [2] of this determination were previously employed by Southern Cleaning Services Limited. Southern Cleaning Services Limited operated a business involved in commercial cleaning.

[13] Southern Cleaning Services Limited sold its business in or about September 2006. The issue for the Authority is whether Broadbat was the purchaser of Southern Cleaning Services Limited at that time.

[14] Mr Henning produced a portion of an agreement for sale and purchase. The portion of the agreement was provided to Mr Henning by Glenn Campbell under cover of letter dated 23 February 2007. It was provided because that part of the agreement related to the liability of the purchaser of Southern Cleaning Services Limited for all staff holiday pay accrued as at the date of possession. Mr Campbell was the manager for Southern Cleaning Services Limited and the portion of the

agreement for sale and purchase specifically provided that *Mr Campbell shall be retained by the purchaser as manager so that staff continuity could be maintained.*

[15] The portion of the agreement for sale and purchase of a business names the vendor as Southern Cleaning Services Limited and the purchaser as McKellor Property Services Limited or nominee. For reasons I shall shortly set out I am satisfied that McKellor is spelt incorrectly and that the name of the company should be McKellar Property Services Limited.

[16] Mr Campbell attached annual leave reports for employees up to 4 September 2006 to his letter. He said in his letter that all other records were within the Wellington Company's Payroll (Broadbat Ltd). Mr Campbell explained in his letter that he did not have authority with Payroll or any financial matters within Broadbat.

[17] I was provided with a timesheet history from early September 2006 for one employee, Grant Mielnik. The timesheet had Broadbat Limited at the top. Mr Henning also provided me with copies of the current employees pay slips which are headed up Broadbat Limited.

[18] The information from Mr Campbell supports that the purchaser of Southern Cleaning Service Limited was Broadbat Limited. Mr Campbell seems to be clear in his letter that Broadbat was the purchaser of the business and that Broadbat holds all employees records.

[19] Significantly Mr Henning wrote to Mr Thomas on several occasions and specifically asked him to confirm if Broadbat was the correct employer in this matter or not. He asked Mr Thomas to explain, if Broadbat was not the correct employer, the relationship between Broadbat and McKellor Property Services Limited. There was no response to any of those letters about that matter.

[20] Broadbat has never advised Mr Henning or the Authority that it was not the purchaser of Southern Cleaning Services Limited. Broadbat has never suggested that it was not the employer of staff from Southern Cleaning Services Limited who elected to transfer across. Broadbat has never said that it should not be named as respondent in this matter.

[21] The documentation supplied to current employees would appear to support that they are employed by Broadbat and I accept Mr Henning's evidence that current employees believe their employer is Broadbat.

[22] Broadbat was incorporated on 27 July 2006. The registered office of Broadbat Limited is the same as a company called McKellar Property Services Limited, being 3 Myrtle Crescent, Mt Cook, Wellington. A search of McKellar Property Services Limited shows a message that the Registrar of Companies is satisfied that the company [McKellar Property Services Limited] has ceased to carry on business and the Registrar of Companies has initiated action to remove the company from the register. There is no company with the name McKellar Property Services Limited.

[23] In all the circumstances I am satisfied that the purchaser of Southern Cleaning Services Limited in or about September 2006 was Broadbat as nominee of McKellar Property Services Limited. As a result of its purchase of Southern Cleaning Services Limited I am satisfied that Broadbat then employed Graeme Paine, Grant Mielnik, Lynette McCarthy, Gina Thomas and John Walsh from early September 2006. Broadbat still employs Raylene Campbell and Ann Fleury.

[24] Broadbat is the correct identity of the respondent.

What are Broadbat's obligations under the Holidays Act 2003 and Employment Relations Act 2000 with respect to provision of holiday and leave records and payment of holiday pay?

[25] Broadbat has obligations to provide records for its employees including holiday and leave records when required to do so by a Labour Inspector.

[26] Section 229(1)(d) of the Employment Relations Act 2000 provides that the Labour Inspector has 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 of any employee of that employer.

[27] Section 82 of Holidays Act 2003 entitles the Labour Inspector to request access to or a copy of holiday and leave records.

[28] Section 24 and 25 of the Holidays Act 2003 deals with calculation of annual holiday pay.

Did Broadbat breach its obligations in terms of provision of records and payment of holiday pay, and, if so, should penalties be awarded and should other orders be made?

Grant Mielnik

[29] Mr Mielnik ceased his employment with Broadbat on or about 15 November 2006. He had transferred from Southern Cleaning Services Limited.

[30] On 22 November 2006 Mr Henning wrote to Broadbat and asked for clarification that Broadbat was the entity liable for payment of holiday pay to Mr Mielnik. Mr Henning asked for confirmation in his letter whether or not Mr Mielnik had been paid his final wages and holiday pay. In the event the final wages and/or holiday pay had not been paid Mr Henning requested various records to help with checking. Mr Henning asked for a copy of Mr Mielnik's written employment agreement and a copy of wages, time and holiday records for the full period of employment.

[31] There was no response to that letter.

[32] Alun McGowan, Labour Inspector, visited the registered office of Broadbat at 3 Myrtle Crescent, Mt Cook, Wellington on 18 January 2007. He was told that Mr Thomas was unavailable. Mr McGowan delivered a further request under s.82 of the Holidays Act 2003 and s.229 of the Employment Relations Act 2000 for a copy of Mr Mielnik's complete wage, time and holiday records. Mr McGowan advised in the letter that penalties could be awarded for failure to provide the records and said that he would visit the company to pick up the records on 26 January 2007.

[33] Mr McGowan returned to Broadbat on 26 January 2007 and was handed an envelope with the records for Mr Mielnik. Mr McGowan was again advised that Mr Thomas was unavailable.

[34] Although Mr Henning felt the records provided were inadequate he was able to make an assessment of what Mr Mielnik was owed and assessed that there was a balance due and owing to Mr Mielnik of \$2,320.95 for holiday pay.

[35] The assessment was provided to Mr Thomas on behalf of Broadbat under cover of letter dated 30 April 2007 for him to consider and respond as to whether he agreed with the assessment. Mr Henning asked in his letter that a cheque be

forwarded for the amount owing if there was no dispute in terms of the assessment. Mr Henning required a reply within 10 working days.

[36] There was no response to that letter on behalf of Broadbat.

Holiday Pay

[37] There was a failure by Broadbat to calculate and pay Mr Mielnik his holiday pay which I am satisfied in the absence of full and correct records was assessed as accurately as possible by Mr Henning. I am satisfied that the holiday pay remains unpaid.

[38] It is appropriate to make an order with respect to holiday pay owed to Mr Mielnik. Given that I will make that order I do not, at this point in time, make an order for compliance for payment of holiday pay by a particular date as requested by Mr Henning.

[39] I order Broadbat Limited to pay to the Department of Labour the sum of \$2,320.95 with respect to Mr Mielnik's holiday pay.

Interest

[40] A significant period of time has expired since Mr Mielnik finished his employment with Broadbat. I am of the view that an award of interest is warranted in the circumstances. I consider that interest should be payable from 22 November 2006 when Mr Henning first wrote to Broadbat about holiday pay for Mr Mielnik.

[41] I order that interest be paid on the sum of \$2,320.95 from 22 November 2006 until the date of payment at the rate of 9% which is not greater than the 90 day bill rate at the date that this order is made plus 2%.

Penalty

[42] Mr Henning has also claimed a penalty for failure by Broadbat to comply with the requirements of ss.24 and 25 of the Holidays Act 2003 to calculate and pay holiday pay to Mr Mielnik. An employer who fails to comply with these provisions of the Holidays Act 2003 is liable to a penalty for non compliance under s.75 of the Holidays Act 2003.

[43] The application for a penalty has been made within 12 months of the matter coming to the Labour Inspector's attention.

[44] I am of the view that there should be a penalty awarded for the failure by Broadbat to properly calculate and pay Mr Mielnik's holiday pay under ss.24 and 25 of the Holidays Act 2003. I have taken into account in assessing the amount of that penalty that there was no reason advanced by Broadbat for failure to pay holiday pay to Mr Mielnik when his employment finished. There was no challenge to Mr Henning's assessment of the amount owing to Mr Mielnik. I have also taken into account that at least some records for Mr Mielnik were provided by Broadbat which enabled an assessment of holiday pay to be made by the Labour Inspector and there was a payment made to Mr Mielnik at the time he finished employment with Broadbat of \$824.35 which was taken into account by Mr Henning in terms of his assessment of holiday pay owing to Mr Mielnik.

[45] Broadbat Limited is ordered to pay a penalty of \$200 under s.75 of the Holidays Act 2003 to the Employment Relations Authority who will then pay the sum into the Crown bank account.

Graeme Paine

[46] I find that Mr Henning made the first request for Mr Paine's records in a letter to Broadbat dated 1 March 2007. There were some telephone calls from Mr Henning to Broadbat that confirmed to Mr Henning that the correspondence requesting the records had been received. The records were not provided.

[47] Mr Henning wrote again to Broadbat on 30 April 2007 and said in his letter that Mr Paine had an outstanding annual holiday pay entitlement of \$1,979.95 when he ceased employment with Southern Cleaning Services Limited and was transferred to Broadbat. Mr Henning's letter of 30 April 2007 requested Broadbat forward copies of Mr Paine's wage, time and holiday records for the period from 5 September 2006 to the date Mr Paine finished employment with Broadbat. Mr Henning referred to the requirement to provide the records under the Holidays Act 2003 and the Employment Relations Act 2000. Mr Henning advised in his letter that there could be penalties and an application for compliance in the event of failure to provide the records.

[48] No response was received from Broadbat. I am satisfied there were no records provided to Mr Henning. Mr Henning was not in those circumstances able to calculate Mr Paine's holiday pay entitlement whilst he was employed by Broadbat.

Holiday Pay

[49] It is appropriate to make an order that Broadbat pay Mr Paine part of the holiday pay he is entitled to. That is the annual holiday pay entitlement he had when he ceased his employment with Southern Cleaning Services Limited and was transferred to Broadbat. I accept that Broadbat assumed liability for the staff holiday pay accrued as at the date it employed Mr Paine. That is the sum of \$1,979.95. I do not consider it appropriate in addition to this order to make an order for compliance for payment of the holiday pay by a particular date as requested by Mr Henning.

[50] I order Broadbat Limited to pay to the Department of Labour the sum of \$1,979.95 being part of the holiday pay that Graeme Paine should have received when he ceased his employment with Broadbat Limited.

Interest

[51] I find that there should be an order for interest payable on the sum of \$1,979.95 from 30 April 2007 when Mr Henning wrote and advised Broadbat that that was part of Mr Paine's outstanding holiday pay entitlement.

[52] I order that interest be paid on the sum of \$1,979.95 from 30 April 2007 until the date of payment at the rate of 9%.

Penalty

[53] Broadbat has failed to comply with ss.24 and 25 of the Holidays Act 2003. In the circumstances of this case the failure to calculate and pay holiday pay to Mr Paine warrants imposing a penalty under s.75 of the Holidays Act 2003. The application was made within 12 months from the time the matter came to the attention of the Labour Inspector.

[54] I also find that it is an appropriate case for a penalty for the failure by Broadbat to comply with a request from the Labour Inspector under s.229(1)(d) of the Employment Relations Act 2000 and s.82 of the Holidays Act 2003 to provide

Mr Paine's wage, time and holiday records. Section 229(3) of the Act provides for a penalty if an employer fails to comply with the requirements under that section.

[55] The maximum penalty for each breach in the case of a company is \$10,000. Broadbat did not meet its statutory obligations in terms of production of Mr Paine's records. I have taken into account the possibility that the records may have been provided to Mr McGowan in January 2007 along with Mr Meilnik's. At that time however Mr Paine was incorrectly described as Mr Price. Broadbat said that it did not employ a Mr Price.

[56] Nevertheless Broadbat has simply ignored Mr Henning's request in terms of Mr Paine's records since 1 March 2007. Failure to comply with a requirement to provide records is a serious breach because it prevents an accurate calculation of Mr Paine's entitlements.

[57] In terms of both breaches and taking the circumstances which relate to Mr Paine into account, I consider a global penalty of \$600 should be imposed.

[58] Broadbat Limited is to pay a penalty of \$600 under s.75 of the Holidays Act 2003 and s.229(3) of the Employment Relations Act 2000 to the Employment Relations Authority who will then pay the sum into the Crown bank account.

Compliance

Jurisdiction

[59] The Authority has jurisdiction to make a compliance order under s.137 of the Employment Relations Act 2000. The Labour Inspector seeks an order that Broadbat comply with the request to provide wage, time and holiday and leave records for Mr Paine.

[60] The powers of the Labour Inspector are set out in s.229 of the Employment Relations Act 2000. Section 229(4) provides:

Where a Labour Inspector alleges that any person has not observed or not complied with any provision of section 130(1) or of subsection (2) of this section or any of the Acts referred to in s.223(1), that Labour Inspector may commence proceedings against that other person in respect of the non-observance or non-compliance by applying to the Authority under section 137 for an order of the kind described in subsection (1) of that section, and the provisions of that section apply accordingly with all necessary modifications.

[61] Mr Henning requested holiday and leave records for Mr Paine under s.82 of the Holidays Act 2003 and wage, time and holiday and leave records under s.229 (1) (d) of the Employment Relations Act 2000. The Holidays Act 2003 is one of the Acts referred to in s.223(1) of the Employment Relations Act 2000. Section 229(2) of the Employment Relations Act 2000 refers to the obligation on an employer when there is a requirement from a Labour Inspector that an employer produce copies of records to comply forthwith. I am satisfied that the Authority has jurisdiction to make a compliance order that Broadbat comply with the request for wage, time and holiday and leave records under s.229(4) of the Employment Relations Act 2000.

[62] It is appropriate I find to make an order that Broadbat supply the wage and time and holiday and leave records for Mr Paine to enable his holiday pay to be calculated by the Labour Inspector for the period of his employment with Broadbat.

[63] I order Broadbat Limited comply with the Labour Inspector's request for copies of wage, time and holiday and leave records and supply to the Department of Labour copies of wage, time and holiday and leave records for Graeme Paine by 31 January 2008.

Lynette McCarthy

[64] Ms McCarthy had finished her employment with Broadbat in or about early March 2007. Mr Henning requested holiday and leave records under s.82 of the Holidays Act 2003 for Ms McCarthy in letters to Broadbat in March and April 2007. Broadbat did not respond to letters from Mr Henning. Mr Henning referred me to notes he had taken during telephone calls to Ms Prorok which confirmed the letters containing the requests had been received by Broadbat.

[65] Mr Henning set out in his letter the consequence of the failure to comply with the request to supply records.

[66] No records have been received for Ms McCarthy. Mr Henning requires these records to assess what Ms McCarthy's entitlements to holiday pay are.

Penalty

[67] Broadbat has failed to comply as required under s. 82 of the Holidays Act 2003 and provide a copy of the holiday and leave record for Ms McCarthy. Broadbat has failed to advance any good reason as to why they have not been provided and has failed to communicate at all about the records. I find that there should be a penalty under s.75 of the Holidays Act 2003 for a breach of s.83 of the Holidays Act 2003 which relates to the failure to provide access to Ms McCarthy's holiday and leave records as requested under s.82 of the Holidays Act 2003.

[68] The failure to provide the records means that Ms McCarthy is not able to have accurately assessed the amount owing to her with respect to her holiday pay. The application for a penalty was made within 12 months of the breach coming to Mr Henning's attention.

[69] Broadbat Limited is to pay a penalty of \$500 under s.75 of the Holidays Act 2003 to the Employment Relations Authority who will then pay the sum into the Crown bank account.

Compliance

[70] There has been a failure by Broadbat to comply with the request by Mr Henning under s.82 of the Holidays Act 2003 to provide holiday and leave records. It is appropriate I find to make an order that Broadbat supply the holiday and leave records for Ms McCarthy to Mr Henning to enable the holiday pay to be calculated.

[71] I order Broadbat Limited to comply with the Labour Inspector's request for holiday and leave records under s.82 of the Holidays Act 2003 and supply to the Department of Labour the holiday and leave records for Lynette McCarthy by 31 January 2008.

Gina Thomas

[72] Mr Henning made the request for holiday and leave records for Ms Thomas in letters sent to Broadbat in March and April 2007. The request was made under s.82 of the Holidays Act 2003. Ms Thomas had finished her employment with Broadbat by March 2007. Broadbat did not respond to Mr Henning's letters although I am

satisfied from notes that Mr Henning took of telephone calls he had with Ms Prorok that the company received the letters.

[73] Mr Henning set out in his April 2007 letter the consequences of a failure by Broadbat to comply with the request to supply records.

[74] I am satisfied that Broadbat failed to provide Ms Thomas' holiday and leave records and did not communicate with Mr Henning at all in respect of this matter.

[75] Mr Henning needs Ms Thomas's holiday and leave records to be able to assess her entitlement in respect of holiday pay.

Penalty

[76] Broadbat has failed to comply with the Labour Inspector's request for Ms Thomas' holiday and leave records under s.82 of the Holidays Act 2003. Broadbat has advanced no reason why they have not been provided but has simply failed to communicate at all with the Labour Inspector's request. The application for a penalty was made within 12 months of the breach.

[77] In those circumstances I am of the view that a penalty under s.75 of the Holidays Act 2003 should be imposed of \$500 for a breach of s.83 of the Holidays Act 2003 for failing to provide access to holiday records.

[78] Broadbat Limited is ordered to pay a penalty of \$500 under s.75 of the Holidays Act 2003 to the Employment Relations Authority who will then pay the sum into the Crown bank account.

Compliance

[79] There has been a failure by Broadbat to comply with the request by Mr Henning under s.82 of the Holidays Act 2003 to provide holiday and leave records.

[80] I find it is appropriate to make an order that Broadbat supply the holiday and leave records for Ms Thomas to enable Mr Henning to assess her holiday pay entitlement.

[81] I order Broadbat Limited to comply with the Labour Inspector's request to supply holiday and leave records under s.82 of the Holidays Act 2003 and to supply to

the Department of Labour the holiday and leave records for Gina Thomas by 31 January 2008.

John Walsh

[82] Mr Henning made an initial request for information about Mr Walsh's holiday pay entitlement on 9 March 2007.

[83] He followed that up with a formal request for the complete holiday and leave records of Mr Walsh on 25 April 2007. Mr Henning set out in his letter to Broadbat the consequences of the failure by Broadbat to comply with his request under s.82 of the Holidays Act 2003 and provide Mr Walsh's holiday and leave records.

[84] There was no response by Broadbat to Mr Henning's correspondence with respect to Mr Walsh and I am satisfied that no records were provided to Mr Henning to enable him to assess Mr Walsh's entitlement to holiday pay.

Penalty

[85] Broadbat has failed to comply with the request for Mr Walsh's holiday and leave records under s.82 of the Holidays Act 2003. Broadbat has failed to advance any good reason why the records have not been provided or communicate at all about the records. That is a breach of Broadbat's obligations under the Holidays Act 2003. Without the records Mr Henning cannot calculate Mr Walsh's entitlement to holiday pay. The application for a penalty was made within 12 months of the breach.

[86] I find that a penalty under s.75 of the Holidays Act 2003 for a breach of s.83 of the Holidays Act 2003 for failing to provide access to holiday and leave records under s.82 should be imposed of \$500.

[87] Broadbat is ordered to pay a penalty of \$500 under s.75 of the Holidays Act 2003 to the Employment Relations Authority who will then pay the sum into the Crown bank account.

Compliance

[88] There has been failure by Broadbat to comply with the request from Mr Henning under s.82 of the Holidays Act 2003 and provide Mr Walsh's holiday and leave records.

[89] It is appropriate I find to make an order that Broadbat supply the holiday and leave records to the Labour Inspector to enable Mr Walsh's holiday pay entitlements to be assessed.

[90] I order Broadbat Limited to comply with the Labour Inspector's request for holiday and leave records under s.82 of the Holidays Act 2003 and supply to the Department of Labour the holiday and leave records for John Walsh by 31 January 2008.

Raylene Campbell

[91] Ms Campbell is a current employee of Broadbat. I am satisfied that Ms Campbell requested records with respect to her holiday and leave entitlements from her employer in January and February 2007. In March 2007 Mr Henning wrote to Broadbat on Ms Campbell's behalf requesting records with respect to her holiday and leave entitlement. Mr Henning wrote again to Broadbat in April 2007 and made it very clear to the company the consequences if they failed to provide the records. Mr Henning spoke to Ms Prorok from Broadbat after the April letter and confirmed that the correspondence had been received.

[92] No records were provided to Mr Henning with respect to Ms Campbell to enable him to assess her holiday and leave entitlement as requested under s.82 of the Holidays Act 2003. There was no other communication received from Broadbat in terms of the request.

Penalty

[93] Broadbat has failed to comply with requests for Ms Campbell's holiday and leave records under s.82 of the Holidays Act 2003. Broadbat has advanced no good reason why they have not been provided and in this case Ms Campbell initially requested the records herself as a current employee. Ms Campbell then had to get Mr Henning to follow the matter up with her employer. I consider the failure by Broadbat to supply Ms Campbell's records in circumstances where she initially made the request as a current employee aggravates the seriousness of the breach. It creates continued uncertainty for Ms Campbell about her entitlement

[94] In those circumstances I find that a penalty under s.75 of the Holidays Act 2003 should be imposed of \$1,000 for a breach of s.83 of the Holidays Act for failing

to provide access to the holiday record as requested under s.82 of the Holidays Act 2003. The application for a penalty was made within 12 months of the breach.

[95] Broadbat is ordered to pay a penalty of \$1,000 under s.75 of the Holidays Act 2003 to the Employment Relations Authority who will then pay the sum into the Crown bank account.

Compliance

[96] There has been a failure by Broadbat to comply with the request by Mr Henning under s.82 of the Holidays Act 2003 to provide holiday and leave records.

[97] It is appropriate I find to make an order that Broadbat supply the holiday and leave records to enable Mr Henning to calculate Ms Campbell's leave and holiday pay entitlement.

[98] I order Broadbat Limited to comply with the Labour Inspector's request for holiday and leave records under s.82 of the Holidays Act 2003 and supply to the Department of Labour the holiday and leave records for Raylene Campbell by 31 January 2008.

Ann Fleury

[99] Ms Fleury is a current employee of Broadbat. I am satisfied Ms Fleury requested records from her employer with respect to her holiday and leave entitlements in January and February 2007. These were not provided.

[100] In March 2007 Mr Henning wrote to Broadbat on Ms Fleury's behalf requesting the holiday and leave records. Mr Henning wrote again in April 2007 requesting the records and making it very clear the consequences of failure to provide them under the Holidays Act 2003. Mr Henning spoke to Ms Prorok from Broadbat to confirm that the correspondence had been received.

[101] I am satisfied there have been no records as requested supplied to Mr Henning with respect to Ms Fleury to enable him to properly assess her holiday and leave entitlements.

Penalty

[102] Broadbat has failed to comply with the request by Mr Henning for Ms Fleury's holiday and leave records under s.82 of the Holidays Act 2003. Broadbat has advanced no good reason why the records have not been provided.

[103] Ms Fleury initially requested the records herself as a current employee and then when they were not provided had to ask Mr Henning to follow the matter up with her employer. I consider the failure by Broadbat to supply Ms Fleury with her records when she made the request as a current employee, which required her to involve Mr Henning in the matter, aggravates the seriousness of the breach.

[104] In those circumstances I find that a penalty under s.75 of the Holidays Act 2003 for a breach of s.83 of the Holidays Act 2003 for the failure to provide access to holiday records as requested under s.82 of the Holidays Act 2003 should be imposed of \$1,000. The application for a penalty was made within 12 months of the breach.

[105] Broadbat Limited is to pay a penalty of \$1,000 under s75 of the Holidays Act 2003 to the Employment Relations Authority who will then pay the sum into the Crown bank account.

Compliance

[106] There has been a failure by Broadbat to comply with the request by Mr Henning under s.82 of the Holidays Act 2003 to provide holiday and leave records.

[107] It is appropriate I find to make an order that Broadbat supply the holiday and leave records to enable Mr Henning to calculate Ms Fleury's holiday and leave entitlements.

[108] I order Broadbat Limited to comply with the Labour Inspector's request for holiday and leave records under s.82 of the Holidays Act 2003 and supply to the Department of Labour the holiday and leave records for Anne Fleury by 31 January 2008.

Costs

[109] The Labour Inspector has been successful in his application and is entitled to be reimbursed the sum of \$70 for the filing fee to the Employment Relations Authority.

[110] I order Broadbat Limited to pay to the Department of Labour the sum of \$70.00 being the filing fee for the statement of problem.

Helen Doyle
Member of the Employment Relations Authority