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Labour Inspector v Cleantime Solutions Limited (Christchurch) [2018] NZERA 1163; [2018] NZERA Christchurch 163 (8 November 2018)

Last Updated: 14 November 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

[2018] NZERA Christchurch 163
3030814 &
3030936

BETWEEN A LABOUR INSPECTOR

Applicant

AND CLEANTIME SOLUTIONS LIMITED

First Respondent

AND BINESH SHUKUL

Second Respondent

AND RANJANA REDDY

Third Respondent

AND AUGELINE DEO

Fourth Respondent

Member of Authority: Andrew Dallas

Representatives: Jodi Ongley, counsel for the Applicant

Amy Keir, counsel for the First, Second and Third Respondents

Investigation Meeting: On the papers Date of Determination: 8 November 2018

CONSENT DETERMINATION

Employment relationship problem

[1] A Labour Inspector, Eva Belley lodged proceedings in the Authority against Cleantime Solutions Limited (Cleantime), Binesh Shukul, Ranjana Reddy and Augeline Deo alleging breaches of minimum employment standards in respect of various workers.

[2] While the Authority is satisfied Ms Deo, the current Fourth Respondent to these proceedings, has been properly served by the Labour Inspector, she has played no part in these proceedings to date. Consequently, this determination does not resolve any matters between the Labour Inspector and Ms Deo. For the avoidance of all doubt, those matters are reserved for further investigation and determination by the Authority.

[3] At the request of the other parties to the proceedings, this consent determination does resolve the factual dispute

between Labour Inspector, Cleantime, Mr Shukul and Mrs Reddy. The resolution of such clears the way for consideration by the Authority of the potential imposition of penalties against Cleantime, Mr Shukul and Ms Reddy without the need for a time consuming and costly factual inquiry.

[4] By consent and by this determination the agreed facts are:

Cleantime

- (i) Cleantime is an incorporated company providing contract cleaning services and operating in Timaru.
- (ii) The directors and shareholders of Cleantime are Mr Shukul, the second respondent and Ms Reddy, the third respondent. Mr Shukul and Ms Reddy are husband and wife.
- (iii) Mr Shukul is a person involved in Cleantime to the extent he is an officer of the business.
- (iv) For the relevant period, Cleantime employed 42 staff. In most cases, Cleantime treated its staff as casual staff, and employees signed employment agreements at commencement reflecting this position and, among other things, including the employee's agreement to be paid 8% holiday pay with their ordinary pay.
- (v) Cleantime admits that by virtue of how the employment relationship operated in practice, 23 of the staff treated as casual were in fact permanent. As such, they were entitled to annual leave, sick leave and other entitlements, which were not provided to them.
- (vi) Cleantime asserts that much of whatever wage and time records were kept by Cleantime were lost following a flooding incident. The parties have had access to limited records only.
- (vii) Cleantime has agreed to pay the employees their outstanding arrears as set out in Appendix One.
- (viii) Cleantime and Mr Shukul acknowledge they have breached minimum employment standards as set out in Appendix Two in relation to the permanent staff and may be liable to a penalty.

Busy Bees

- (ix) Between 2011 and 1 April 2017, Ms Reddy operated a cleaning franchise own her own account, trading as Busy Bees. During this period Mr Shukul acted as the operations manager of Busy Bees franchise. He was a person involved in that business.
- (x) Between 2012 and 1 April 2017, the business employed 11 employees.
- (xi) The business employed 11 employees, but provided records for 6 employees only to calculate arrears, due to a flooding incident.
- (xii) Ms Reddy has agreed to pay the employees their outstanding arrears as set out in Appendix Three.
- (xiii) Ms Reddy acknowledges that the business breached minimum employment standards as set out in Appendix Three and that Ms Reddy trading as Busy Bees may be liable to a penalty.
- (xiv) On 31 March 2017 the Busy Bees cleaning franchise was sold to Ms Deo. Between 1 April and 2018, Ms Deo operated the business. Ms Deo employed 10 employees.
- (xv) Without admitting that he was a person involved in the business, Mr Shukul has agreed to pay the employees on behalf of Ms Deo their outstanding arrears as set out in Appendix Four.

[5] By consent and by this determination the following orders of the Authority are made:

- (i) Cleantime is to pay arrears owing to Cleantime employees of \$9,367.42, on a basis to be agreed between the parties; and
- (ii) The Authority will consider a penalties claim against Cleantime and Mr Shukul for breaches of the Holidays Act and Employment Relations Act.
- (iii) Ms Reddy will pay arrears owing to Busy Bees employees of \$5,003.54 on a basis to be agreed between the parties;
- (iv) The Authority may consider imposing a penalty against Ms Reddy for breaches of the Holidays Act and the Employment Relations Act; and
- (v) Mr Shukul will pay arrears owing to Busy Bees employees of \$1,549.89 on a basis to be agreed between the parties
- (vi) The Applicant does not seek a penalty against Mr Shukul in respect of Busy Bees.

[6] This determination is enforceable under s 137(1)(b) of the Act.

Next steps

[7] The outstanding issue of penalties will be dealt with by the Authority during an investigation meeting convened for that purpose commencing at **10am on 10 December 2018 at Christchurch.**

Costs

[8] Costs are reserved pending disposal of all matters before the Authority.

Member of the Employment Relations Authority

APPENDIX ONE – PAYMENTS TO BE MADE TO EMPLOYEES – CLEANTIME:

- Sick**
- #of leave**
- Sick arrears**
- #PH arrears arrears**
- Start**
- Days**
- Employee**
- ALT**
- holiday**
- PH**
- UWPH**
- #UWPH arrears**
- Finish**
- AVG**
- daily pay**

Augeline Deo	\$163.40	Mo-Fri	4/06/17	22/10/17		2	\$326.80					
Callum Pollock	\$36.49	Tue-Sun	22/05/16	29/01/17		2	\$72.98					
Candy Pereira	\$21.53	Fri-Mo	13/08/17	22/10/17			\$-	1	\$7.88	\$21.53		
Carmel Dwyer	\$35.61	Mo-Sat	26/02/17	19/11/17		3	\$106.83	4	\$31.63	\$142.44		
Darrell Francis*	\$36.21	Mo-Sun	2/05/16	13/08/17		1	\$36.21	11	\$180.69	\$398.31	1	\$31.50
Elizabeth (Anne) Grant	\$47.82	Mo-Fri	3/07/16	ongoing		11	\$526.02					
Janice Wood	\$54.14	Mo-Sat	9/10/16	19/11/17		10	\$541.40	2	\$23.40	\$108.28		
Kaliamma (Savi) Wills	\$46.32	Mo-Sat	11/09/16	18/06/17		12	\$555.84					
Karen Dutdut	\$28.34	Mo-Fri	2/02/17	3/08/17		1	\$28.34					
Kathleen (Ann) Rowe	\$41.42	Mo-Fri	22/05/16	1/01/17			\$-	4	\$68.91	\$165.68		
Melmeite (Meite)	\$59.84	Mo-Sun	13/08/17	19/11/17		1	\$59.84	2	\$22.34	\$119.68		

Siales												
Michelle Tecofsky	\$26.98	Mon-Sun	22/05/16	19/11/17		7	\$188.86	8	\$54.00	\$215.84		
Nick Paula	\$43.92	Mo-Sat	19/06/16	18/06/17		7	\$307.44	2	\$55.13	\$87.84		
Nikkolas Finnie	\$60.46	Mon-Sun	1/05/16	19/11/17		7	\$423.22	8	\$126.72	\$483.68		
Raeleen Pritchard	\$45.88	Mon-Sat	9/10/16	26/02/17		10	\$458.80	1	\$31.20	\$45.88		
Renee Hart	\$33.54	Mo-Fri	23/10/16	19/11/17		11	\$368.94					
Salesh Sukul	\$55.19	Mo-Sun	10/09/17	19/11/17		3	\$165.57	1	\$52.00	\$55.19		
Shannon Owen	\$36.41	Mo-Fri	26/02/17	8/10/17		3	\$109.23	2	\$39.38	\$72.82		
Sharon Lee	\$44.86	Mo-Fri	3/07/16	23/10/16		12	\$538.32					
Sonia McLean	\$45.37	Mo-Fri	24/07/2015	14/08/16		8	\$362.96					
Toni Maree Dobier	\$23.64	Wed, Fri	13/07/2015	12/08/16		3	\$70.92					
Tracy Harper	\$46.47	Mo-Sat	18/02/16	19/11/17		15	\$697.05	1	\$39.38	\$46.47		
Wendy Blissett	\$57.84	Mo-Fri	14/08/16	7/05/17		12	\$694.08					
23 permanent employees						21	\$6,639.65	13	\$732.63	\$1,963.64	1	\$31.50

Total arrears of \$9,367.42 are to be discounted with \$326.80 (Mrs Deo's arrears) leaves \$9,040.62 to be payable directly to each employees' bank account held by the respondent's accountant.

APPENDIX TWO – PENALTIES CLAIMED – CLEANTIME:

Penalties to be claimed against Cleantime Limited and Binesh Shukul:

- For Holiday Act breaches in relation to 23 permanent staff
- For record keeping breaches in relation to 42 staff.

Penalties per breach	Total	Arrears
ss 63 and 71 SICK LEAVE under s75(2)(d)	23	31.50
ss 46 and 49 - UNWORKED PUBLIC HOLIDAYS under s75(2) (c) of the HA	23	\$6,639.65
S50 Payment for WORKED PUBLIC HOLIDAYS*	13	\$732.63
ss56 and 60 ALTERNATIVE HOLIDAYS under s75(2)(c) of the HA	23	\$1,963.64
S28 ANNUAL HOLIDAY incorrectly paid under s75(2)(a) of the HA	23	Arrears not claimed
s81 HOLIDAY AND LEAVE RECORD KEEPING under s75(2)(e) of the HA	42	N/A
Total breaches	147	\$9,367.42

APPENDIX THREE – PAYMENTS TO BE MADE TO EMPLOYEES AND PENALTIES – REDDY (BUSY BEES PRE APRIL 2017):

UNWORKED PUBLIC HOLIDAY ARREARS:

Name	UWPH arrears
Tineke Richardson	\$ 2,791.54
Michelle Welsh	\$ 689.70
Carlyn Campbell	\$ 1,070.70
Avana McEvedy	\$ 42.28
Anna Thorpe	\$ 99.56
Christa Dinkelaar	\$ 309.75

Total arrears: **\$ 5,003.54**

PENALTIES CLAIMED (RANJANA REDDY):

Penalties per breach	Total	Arrears
ss 46 and 49 - UNWORKED PUBLIC HOLIDAYS under s75(2) (c) of the HA	6	\$5,003.54
S27 Final HOLIDAY pay not paid accordingly under s75(2) (a) of the HA	11	N/A
s81 HOLIDAY AND LEAVE RECORD KEEPING under s75(2) (e) of the HA	11	N/A
S130 TIME AND WAGE RECORDS under s133 of the ERA	11	N/A
Total breaches	39	\$5,003.54

APPENDIX FOUR – PAYMENTS TO BE MADE TO EMPLOYEES AND PENALTIES – DEO:

UNWORKED PUBLIC HOLIDAY ARREARS*:

Employee UWPH arrears

1. Tineke Richardson	\$ 348.76
2. Avana McEvedy	\$ 376.56
3. Andrea Hopkinson	\$ 377.08
4. Angela Harris	\$ 235.18
5. Christine Chmiel	\$ 212.31
6. Total	\$ 1,549.89 *

*\$326.80 Mrs Deo's arrears calculated for Cleantime Solutions Limited to be put towards arrears payable.

PENALTIES CLAIMED (AUGELINE DEO):

Penalties per breach	Total	Arrears
ss 46 and 49 - UNWORKED PUBLIC HOLIDAYS under s75(2) (c) of the HA	5	\$1,549.89
S27 Final HOLIDAY pay not paid accordingly under s75(2) (a) of the HA	10	N/A
s81 HOLIDAY AND LEAVE RECORD KEEPING under s75(2) (e) of the HA	10	N/A

S130 TIME AND WAGE RECORDS under s133 of the ERA	10	N/A
Total breaches	35	\$1,549.89

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