



determination of 5%.<sup>1</sup> Mr Dumbleton confirmed payment of the wages arrears had been received on 11 May 2017.<sup>2</sup> However 40 days of interest of \$68.43 remained outstanding. Despite payment the Labour Inspector still seeks penalties.

### **Relevant Facts**

[2] The Labour Inspector seeks penalties for breaches for:

- a) Failure to pay two employees the minimum wage pursuant to s10 Minimum Wage Act 1983 (MWA);
- b) Failure to pay holiday pay to four employees pursuant to s75(1)(b) and (2)(a) of the Holidays Act 2003 (HA);
- c) Failure to pay public holiday pay to four employees pursuant to s75(1)(b) and (2)(c) of the HA;
- d) Failing to provide a written employment agreement pursuant to s64 and 135 of the Employment Relations Act 2000 (ERA).

### **Nonappearance by respondent**

[3] The respondent has not participated in this investigation other than to pay the arrears and provide evidence about its financial circumstances. No other steps have been taken to defend the issue of penalties. In the circumstances I intend determining this matter without further reference to them.

### **Determination**

[4] Sections 10 MWA, s76A HA and s64 ERA all refer to s133A or to the recovery of penalties under the ERA. The Court has also issued a decision known as *Jeanie May Borsboom (Labour Inspector) v Preet Pvt Limited and Warrington Discount Tobacco Limited*<sup>3</sup> that also deals with penalties involving multiple breaches.

[5] The nature and extent of the breaches here were originally 11 breaches that on *Brosbooms* analysis could have garnered penalties of \$220,000.

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<sup>1</sup> *Labour Inspector v Daleson Investment Limited* [2017] NZERA Auckland 92.

<sup>2</sup> Email A Dumbleton to Authority 27 July 2017.

<sup>3</sup> [2016] NZEmpC 143.

[6] At hearing there was clearly an issue about the majority of the wages and holiday pay owed to Mr Singh. The wage arrears have also been paid in full indicating an admission and remedial action. The failure to provide a written employment agreement has not and probably cannot be remedied as Mr Baksh is no longer employed and was not produced at hearing. No loss has been suffered by him although non-compliance with the statute is an issue.

[7] In the circumstances the penalties are reduced to \$220.

[8] The following orders are now made:

- a) Daleson Investment Limited is ordered to pay a penalty of \$220 to the Labour Inspectorate pursuant to s.135 of the Employment Relations Act 2000.
- b) Costs are reserved. If the Labour Inspector seeks an order for costs a memorandum shall be filed and served 14 days from the date of this determination. The other party shall have 14 days to file and serve a reply.

**T G Tetitaha**  
**Member of the Employment Relations Authority**