

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 500/10
5310894

BETWEEN SARAH MILLAR (LABOUR
INSPECTOR)
Applicant

AND JASWANT SINGH LIMITED
Respondent

Member of Authority: Vicki Campbell

Representatives: Sarah Millar (Labour Inspector) for Applicant
Jaswant Singh for Respondent

Investigation Meeting: On the papers

Determination: 30 November 2010

DETERMINATION OF THE AUTHORITY

[1] Ms Kulbir Kaur was employed by Jaswant Singh Limited as an Orchard Worker. In accordance with the Employment Relations Act 2000 the parties had signed a written employment agreement.

[2] On 8 December 2009 Ms Kaur lodged a complaint with the Labour Inspectorate at Tauranga alleging she was entitled to payment for outstanding holiday pay which had not been paid in accordance with the Holidays Act 2003. Labour Inspector, Ms Sarah Millar, investigated Ms Kaur's complaint and formed an opinion that the following holiday pay was outstanding and owed to Ms Kaur:

- \$390.91 - the relevant daily pay for work carried out on public holidays;
- \$227.13 - time and a half payment for time worked on public holidays; and
- \$299.97 - payment for days in lieu having worked a public holiday.

[3] The Labour Inspector seeks payment of the outstanding Holiday Pay in the amount of \$918.01 gross plus interest and the costs associated with bringing this claim to the Authority.

[4] In its statement in reply Jaswant Singh Limited says all outstanding holiday pay has been paid to Ms Kaur. This is denied by the Labour Inspector who says the amount claimed in the statement of problem continues to be outstanding.

[5] During a telephone conference call on 29 October 2010 the parties agreed the Authority could determine this matter based on the papers and that no investigation meeting would be necessary. That afternoon, Mr Singh contacted the Authority and advised Support Officer, Mr Stephen Berry, that he had further papers he wished the Authority to take into consideration. Mr Singh was advised to provide the papers promptly.

[6] After receiving nothing more from Mr Singh, the Authority contacted him on 11 November 2010 and asked that he produce any additional papers by 5.00pm on 12 November. Mr Singh was provided with an email address and fax number to assist him. No papers have been received from Mr Singh.

[7] Mr Singh has had sufficient opportunity to produce any additional material he wished the Authority to consider but has failed to do so. I have therefore determined this matter on the available documents.

[8] In her investigation report attached to the statement of problem, Ms Millar sets out a number of discussions she had with Mr Singh's accountant with regards payment. Ms Millar makes note in her report that it is agreed that the amount claimed is owing to Ms Kaur. It seems the only discussion was around how the payment would be made.

[9] The Authority has the power to order payment of money to an employee by instalments, if the financial position of the employer requires it.¹ However, there is no evidence from the respondent to support such an order in this case.

[10] I am satisfied Ms Kaur is owed the holiday pay as set out in the Labour Inspector's report.

¹ Employment Relations Act 2000, section 131(1A).

Jaswant Singh Limited is ordered to pay to the Labour Inspector for Ms Kaur's credit, the sum of \$918.01 gross in outstanding holiday pay within 28 days of the date of this determination.

Interest

[11] The Authority has discretion to award interest on outstanding holiday pay. The delay in payment of holiday pay warrants an award of interest for the period Ms Kaur has been denied what is owed to her.

[12] The interest calculated under clause 11 of Schedule 2 of the Employment Relations Act is to be at a rate of not greater than the 90-day bill rate at the date of the order plus 2 percent. Interest is to be paid at the rate of 5%.

Jaswant Singh Limited is ordered to pay to the Labour Inspector for Ms Kaur's credit interest on the sum of \$918.01 at the rate of 5% per annum from 30 December 2008 until the date of payment. Such interest shall be paid within 28 days of the date of this determination.

Costs

[13] The Labour Inspector shall have the lodgement fee on this application.

Jaswant Singh Limited is ordered to pay to the Labour Inspector \$70.00 in reimbursement of the filing fee on this application within 28 days of the date of this determination.

Vicki Campbell
Member of Employment Relations Authority