

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 366/10
5305915

BETWEEN SUSAN QUINN (LABOUR
 INSPECTOR)
 Applicant

AND MINATO LIMITED
 Respondent

Member of Authority: Alastair Dumbleton

Representatives: Labour Inspector in Person
 No appearance for Respondent

Investigation Meeting: 18 August 2010

Determination: 18 August 2010

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Labour Inspector Ms Susan Quinn has claimed outstanding holiday pay and minimum wages due to Ms Patimaporn Pensakul, a former employee of the respondent, Minato Limited.

[2] Ms Pensakul worked at Long John Silver, an establishment operated by the company.

[3] The total amounts claimed for her are \$2,053,28 gross annual holiday pay and public holiday pay, and \$34.75 gross minimum wages.

[4] I am satisfied from the Inspector and from the contents of her report, including emails from a director of the respondent company, that a full and thorough investigation has been carried out into the terms and conditions of employment of Ms Pensakul and the payments she received, and that the Inspector's conclusion is

correct that the employee has not been paid her full entitlements under the Holidays Act 2003 and the Minimum Wage Act 1983.

[5] The company has not lodged a statement in reply to the claim although there has been advice from its director, Mr Matt Barnes, that he saw his attendance at the investigation meeting as pointless in view of the financial circumstances of his company.

[6] Mr Barnes acknowledged in an email sent on 22 July that the company had been served with the notice of investigation meeting for 18 August.

Determination

[7] The Inspector is entitled to the orders sought. Minato Limited is ordered to pay to the Labour Inspector for the use of Ms Patimaporn Pensakul, \$2,053.28 gross as annual holiday pay and public holiday pay, and the amount of \$34.75 gross as minimum wages.

[8] Minato Limited is ordered to pay interest on the total of the above sums at 4.75% per annum from 1 April 2010, the date the Labour Inspector advised of her assessment of the arrears due and requested payment.

[9] A penalty is sought for failure to comply with the Holidays Act 2003. The maximum is \$10,000. The amount of holiday pay due is significant. I consider in the circumstances \$2,500 is an appropriate penalty and I order Minato Limited to pay that amount to the Labour Inspector.

[10] I also order the company to reimburse the Inspector the \$70 filing fee paid to lodge her application.

A Dumbleton
Member of the Employment Relations Authority