

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 46/09
5135985

BETWEEN RONA PRINT LIMITED
 Applicant

AND MONICA IRI SEARANCKE-
 CLARKE LABOUR
 INSPECTOR
 Respondent

Member of Authority: P R Stapp

Representatives: Sue Baxter for Applicant
 Monica Iri Searancke-Clarke Labour Inspector

Telephone Conference: 15 April 2009

Determination: 15 April 2009

DETERMINATION OF THE AUTHORITY

Objection to a Demand Notice

[1] Sue Baxter is a shareholder of Rona Print Limited and on behalf of the company has objected to a demand notice for \$1717.60 issued by the Labour Inspector. Ms Baxter's application on behalf of the company is in the time required for making an objection.

[2] Ruamo Hutchinson was employed by Rona Print Limited as an assistant. She made a complaint to the Department of Labour that she had not been paid properly. In the absence of any wage and time records the inspector has constructed from the information available the amount of \$1,717.60 holiday pay and sick pay owing to Ruamo Hutchinson under the Holidays Act.

The issue

[3] How much money is owed to Ruamoia Hutchinson by Rona Print Limited?

The facts

[4] I am satisfied that Ruamoia Hutchinson was employed by Rona Print Limited and that she complained to the Department of Labour about not being paid holiday pay and sick pay.

[5] I am satisfied that the department's inspector has attempted to construct an amount owing on the basis of information provided by the complainant, and gave the company prior notice to enable it to make any comment. Upon being satisfied that there was no likelihood of payment being made the inspector issued, under the requirements of the Act, a demand notice for payment.

[6] An investigation meeting was scheduled for 5 May 2009. I decided that mediation would not assist to resolve the matter, and instead that the matter required a determination. The Authority's senior support officer arranged a telephone conference because Ms Baxter was frustrated about what she could do because the whereabouts of the company's sole director was unknown, she was not an employee or an officer of the company, the company had closed down, ceased trading and had no assets and considerable liabilities. Ms Baxter has assisted with providing as much information as she could to help. On the basis of this information the inspector recalculated the sum owing in an amount of \$1,812.60 and asked for a "compliance notice for these arrears".

[7] During the telephone discussion with me it has been established that the sum of \$1,212.60 is the actual amount of holiday pay and sick pay owing instead of \$1,812.60 above. Ms Baxter has acknowledged that she could not say whether or not the sum was correct because she did not have any other records. She acknowledged that the holiday pay should be calculated on the basis of 8 percent and not 6 percent. Therefore, I accept that there is an amount owing because the company has not produced any wage and time records of any hours and payments and holiday payments.

[8] The inspector has requested compliance, but accepts there has been no attempt to recover the recalculated sums. I am therefore not prepared to make a compliance order, but will enter judgment in favour of the inspector on the amount owing, which can be enforced as a debt owing under s 141 of the Act. There will be problems for enforcement if the information I have been given is correct and that there are no assets and considerable liabilities, and where the company is no longer trading.

[9] Given that the company is still registered and the inspector has established that there is a sum owing I have decided to make an order to safeguard any enforcement in the future.

Determination

[10] I am satisfied that the objection raised and accompanied with more information from Ms Baxter has caused the Labour Inspector to recalculate again the sum owing. This is because Ms Baxter identified a small sum (\$600) was paid after Ms Hutchison's employment had ended, and this sum has been deducted from the sum claimed of \$1,812.60.

[11] The amount now payable is \$1,212.60.

Order of the Authority

[12] I order Rona Print Limited to pay the Labour Inspector at the Department of Labour in the Inspectorate's Wellington office, the sum of \$1,212.60 for the use of Ruamo Hutchinson.

[13] The scheduled investigation meeting on 5 May 2009 has been vacated.

P R Stapp
Member of the Employment Relations Authority