

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 68
5444167

BETWEEN ALAN JOHN REID, LABOUR
INSPECTOR
Applicant

A N D ROSE INVESTMENTS
LIMITED
Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Alan Reid, Labour Inspector (Applicant)
Karen Hiatt, Director of Respondent

Investigation Meeting: On consideration of papers

Date of Determination: 26 February 2014

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Ms Kim Marinkovic, was employed by the respondent company, Rose Investments Limited (“Rose”) as an optical assistant until her resignation on 4 January 2013. Ms Marinkovic subsequently complained to the applicant, Mr Alan Reid (“the Labour Inspector”) about non-payment of wages, annual and public holidays to her by Rose.

[2] The Labour Inspector conducted a full and thorough investigation and determined that Rose was liable to pay Ms Marinkovich for public holidays in the sum of \$794.88 payable pursuant to the Holidays Act 2003.

[3] The Labour Inspector contacted Ms Karen Hiatt, Director of Rose on numerous occasions seeking payment of the public holidays and warned her that if payment was not made a Demand Notice would be issued. The public holidays were

not paid and on 19 September 2013 the Labour Inspector issued a Demand Notice pursuant to s.224 of the Employment Relations Act 2000 (“the Act”) as follows:

“To Rose Investments Limited.

1. *This Demand Notice is being served on you in your capacity as the former employer of Kim Marinkovic (the **employee**).*
2. *I believe on reasonable grounds that the employee has not received an amount payable by you to the employee under the Holidays Act 2003.*
3. *The amount payable is \$794.88, being payable pursuant to the Holidays Act 2003.*
4. *I have given you not less than 10 days to comment on the grounds for my belief.*
5. *I am satisfied, after having considered any comments made by you, that the employee is entitled to the amount specified.*
6. *I am satisfied that you are not willing to pay the amount specified in a reasonable manner or within a reasonable time.*

Demand

7. *I demand by this Notice that you pay the employee the amount specified.*

Objection

8. *Both your right to lodge an objection to this Demand Notice and the consequences of this Notice are specified in the **additional information for the employer** that is supplied with this Notice.”*

[4] The additional information in the Demand Notice stated that Rose could “lodge with the Employment Relations Authority, within 28 days after this Demand Notice is served on you, an objection to this Demand Notice.”

[5] No objection to the Demand Notice was filed by Rose and no payment of the holiday pay demanded by the Labour Inspector, was made by Rose to Ms Marinkovic.

[6] I am satisfied that the sum of \$794.88 is payable by Rose to the Labour Inspector for the use of Ms Marinkovic.

[7] The Labour Inspector filed a statement of problem in the Employment Relations Authority on 23 December 2013 seeking a compliance order pursuant to s.137 of the Act that:

- Rose make payment of the sum of \$794.88 gross under the Holidays Act 2003;

- awards of interest be made pursuant to s.84(2) of the Holidays Act 2003 and s.165 and Schedule 11 of the Employment Relations Act 2000 on the holiday pay owing of \$794.88 from 4 January 2013 to the date of payment;
- a penalty of \$20,000 be imposed for the failure by Rose to pay the public holiday arrears pursuant to s.75(1)(b) and s.75(2)(a) of the Holidays Act 2003 together with:
- an order be made pursuant to s.165 of the Act reimbursing the Labour Inspector for the filing fee of \$71.56 when filing its application in the Employment Relations Authority for a compliance order.

[8] A statement in reply was filed in the Authority on 5 February 2014 which did not address the Demand Notice, nor the failure by Rose to object to the Demand Notice. A telephone conference was scheduled and agreed upon between the parties but Ms Hiatt for Rose was not available for the telephone conference or for a follow up telephone conference scheduled.

[9] In the circumstances, it is appropriate that this matter be dealt with on consideration of the papers.

Compliance Order

[10] I am satisfied that Rose has not complied with or objected to the Demand Notice in accordance with ss224 and 225 of the Act. It is just in the circumstances for orders to be made requiring Rose to comply with the Demand Notice and pay the Labour Inspector the following sums:

- (a) Holiday pay of \$794.88 gross for the use of Ms Marinkovic;
- (b) Interest on the sum of \$794.88 at the rate of 5% per annum from 4 January 2013 until this sum is paid.

[11] The Labour Inspector seeks a penalty of up to \$20,000. I have given close consideration to imposing a penalty as sought. However, given the relatively small amount involved and the financial state of the business, I decline to order a penalty in the circumstances.

[12] For the information of Rose, failure to comply with an order such as this one made by the Authority under s.137 of the Act may provide a basis for an application to be made by the Labour Inspector to the Employment Court for enforcement of the order, together with a fine of up to \$40,000.

Costs

[13] This matter was heard on the papers. In this situation a minimal amount in recognition of the costs incurred by the Labour Inspector in bringing this application for compliance is appropriate.

[14] Rose is ordered to pay an additional sum of \$250.00 in costs pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000.

[15] I further order Rose to reimburse the Labour Inspector the \$71.56 filing fee.

[16] These sums awarded in this determination including costs and reimbursement of filing fee are to be paid within 14 days of today's date.

[17] Pursuant to Regulation 26 of the Employment Relations Authority Regulations 2000, the Labour Inspector is to be provided with a certificate of determination, sealed with the seal of the Authority recording that Rose is ordered to pay to the Labour Inspector the sums set out in this determination.

Anna Fitzgibbon
Member of the Employment Relations Authority