

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2018] NZERA Christchurch 171
3004991

BETWEEN KENNETH JOHN TROTTER
Applicant

AND TELFER ELECTRICAL NELSON
LIMITED
Respondent

Member of Authority: Andrew Dallas

Representatives: Nicole Ironside, counsel for the Applicant
Ashley-Jane Lodge, counsel for the Respondent

Investigation Meeting On the papers

Date of the Determination 26 November 2018

CONSENT DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On 7 March 2017, Mr Trotter applied to the Authority seeking enforcement of the provisions of the Holidays Act 2003 against Telfer Electrical Nelson Limited (TENL) in order to obtain payment of his statutory holiday pay entitlements owing to him at the end of his employment on 14 February 2017. Mr Trotter also sought a penalty against TENL, interest and costs.

[2] TENL opposed the application by way of a statement in reply dated 21 March 2017 on the basis that Mr Trotter was not entitled to make a holiday pay claim because a s149 certified record of settlement, entered into between the parties on 14 February 2017, settled all matters including holiday pay. Alternatively, Mr Trotter had no claim to holiday pay because he had no accrued annual holidays at the end of his employment.

[3] The parties have agreed that Mr Trotter does have statutory holiday pay entitlements owing to him at the end of his employment on 14 February 2017, that he is entitled to be paid his entitlements with interest and that he is entitled to be paid costs. The parties have requested that the Authority makes orders in respect of their agreement.

[4] By consent and by this determination the following orders are made:

- (i) TENL will pay Mr Trotter \$19,868.79 for accrued holiday pay owing to him at the end of his employment with TENL on 14 February 2017;
- (ii) TENL will pay interest on the sum of \$19,868.79 calculated from 14 February 2017 to the date of payment, with the interest being calculated using the online civil debt interest calculator;
- (iii) TENL will refund the filing fee of \$71.56 to Mr Trotter;
- (iv) TENL will pay costs of \$10,000 and disbursements of \$120, plus GST on these sums; and
- (v) No penalty is payable by TENL.

[5] The payments in paragraph 4(i), (ii) and (iii) above are to be made to Mr Trotter, without deduction, immediately on these consent orders being made.

[6] The payment in paragraph 4(iv) above is to be made to Ironside Law Trust Account within 5 days of TENL being provided with a tax invoice.

[7] This consent determination is enforceable under s 137(1)(b) of the Employment Relations Act 2000.

Andrew Dallas
Member of the Employment Relations Authority