

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2011] NZEmpC 68
ARC 90/10**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

BETWEEN ARMY SURPLUS DISPOSALS LIMITED
Plaintiff

AND NEVILLE REED
Defendant

Hearing: 13 June 2011
(Heard at Auckland)

Appearances: Roland Doyle, agent for plaintiff
Defendant in Person

Judgment: 22 June 2011

JUDGMENT OF JUDGE ME PERKINS

Introduction

[1] Mr Neville Reed, the defendant in the present proceedings before the Court, commenced a claim in the Employment Relations Authority for arrears of wages owing to him by the plaintiff. He also claimed outstanding holiday pay.

[2] Mr Reed was employed by Army Surplus Disposals Limited (ASDL) from 1 February 2006 to an unspecified date in December 2009. He left the employment when Mr Roland Doyle, a director of ASDL, accused him of theft. At the time of the termination of employment, Mr Reed claims he was owed two weeks' wages and outstanding holiday pay. His claim before the Authority was successful to the extent that he was awarded holiday pay of \$3,620.40 gross and arrears of wages of \$500 net.

[3] The plaintiff, ASDL, filed a challenge to the Authority's determination. The challenge related to the whole of the determination and sought a full hearing of the entire matter (a hearing de novo).

The determination

[4] The Authority Member in her determination mentioned the following:

- (a) During the investigation meeting Mr Doyle had stated that Mr Reed's employment actually ended in September 2009 after which time he was an independent contractor receiving \$500 per week cash together with commission on some sales. Mr Reed had alleged at the meeting that his employment ended in December 2009.
- (b) Mr Doyle also stated that he had withheld one week's payment of wages (not two as alleged by Mr Reed) as reimbursement for money he claimed Mr Reed had stolen from the plaintiff company. As for holiday pay, Mr Doyle did not dispute that \$3,620.40 was outstanding as at September 2009. However, he alleged that he had permitted Mr Reed to keep the proceeds from the sale of some scrap metal and storage rental for some tanks stored on property owned by the company. These sums, he claimed, amounted to \$2,700 and therefore exceeded the net holiday pay owing after tax to Mr Reed.
- (c) Mr Reed did not dispute that he was paid \$500 per week in cash from September 2009. This was nearly equivalent to his net pay anyway. He denied he was an independent contractor. He also denied the allegation that there was an agreement that he could retain the proceeds of sale from the scrap metal and the tank storage in lieu of holiday pay. He stated that records of the storage and sales were kept in an orange book which Mr Doyle had with him at the investigation meeting. Mr Doyle declined to produce this book to the Authority.

(d) Mr Doyle claimed he could provide further evidence that Mr Reed received the money alleged if he was given time. The Authority Member allowed Mr Doyle 10 days following the investigation to provide this information but he failed to do so.

[5] The determination records findings and orders as follows:

[7] By operating its business on a cash basis, without documentation, the respondent has put itself in a vulnerable position. In the absence of wage and time records or other firm evidence to support Mr Doyle's assertions I cannot be satisfied that the company has met its holiday pay obligations.

[8] I am also unable to accept that Mr Reed's status was properly changed from employee to contractor. It appeared from what both witnesses said that Mr Reed continued to work in much the same way as he always had, and was paid (from his point of view) the same as he always had been, for the same number of hours. These circumstances do not indicate a change from employee to contractor.

[9] On the third and final issue only do I find for the respondent. Mr Reed did not explain how two weeks wages came to be owing when he had been paid each week in cash. I am not satisfied that an order can be made for more than one week's wages.

Summary

[10] **The respondent, Army Surplus Disposals Limited is ordered to pay to Mr Reed the following sums:**

- i. holiday pay of \$3,620.40 gross, and**
- ii. arrears of wages of \$500.00 net.**

[6] I have set these matters out as the evidential position presented to this Court at the hearing was clearly similar to the unsatisfactory state of evidence presented to the Authority. There is also a somewhat substantial conflict between the stand taken by the company at the investigation and the claims now made to support the challenge.

Matters preliminary to the hearing of the challenge

[7] The challenge was filed on 10 August 2010. On 1 November 2010 Judge Travis issued a call-over minute, which directed that the parties attend mediation. If

such mediation proved to be unsuccessful, then the challenge was to proceed to trial and timetabling directions were set.

[8] On 22 March 2011 Chief Judge Colgan issued a further minute. In view of the apparent failure to convene a mediation as directed by Judge Travis on 1 November 2010, the challenge was set for a hearing to commence at 9.30 am on Monday 13 June 2011. That minute set in train the timetabling requirements which were to apply as prescribed by Judge Travis back in November 2010.

[9] Following the commencement of the timetabling Mr Doyle filed a document purporting to be the brief of evidence for the plaintiff. Chief Judge Colgan then issued a further minute dated 1 June 2011, which pointed out that the document filed by Mr Doyle, described as a brief of evidence, did not comply with the Court's directions of 1 November 2010. In fact, the document was not a brief of evidence at all but simply a document referring to the plaintiff's intention to call evidence from at least three other witnesses who were identified by name.

[10] In view of the urgency then prevailing, Chief Judge Colgan made further timetabling directions. The plaintiff was to file statements of evidence-in-chief intended to be given by all of its witnesses at the hearing and which briefs were to include the names and other usual identifying particulars of the witnesses. The deadline for filing and service was set at 4 pm on Friday 3 June 2011. If the plaintiff failed to comply with that direction, it would not be entitled to rely on any evidence not so provided in the form of a brief filed in court and provided to the defendant. The defendant was to have until 4 pm on Friday 10 June 2011 to file and serve briefs of evidence-in-chief of witnesses intended to be called by him. Chief Judge Colgan's minute also recorded that in view of the potential for an expanded number of witnesses to be called by the plaintiff, the hearing time was extended from a half day to two days commencing on 13 June 2011 as earlier directed.

[11] Mr Doyle, on behalf of the plaintiff, then filed a memorandum dated 2 June 2011 requesting an adjournment. He claimed to have wanted advice from the Court registry as to the format required for the briefs but was unable to make contact. He also claimed at this late stage that his main witness was unable to attend the hearing

set for 13 and 14 June 2011. He also requested that the evidence of two other witnesses be adduced by affidavit without the need for the witnesses to attend court. He claimed that the plaintiff needed more time to prepare.

[12] The defendant opposed the adjournment. Nearly a year had elapsed since the determination. The application for adjournment was declined. In a further minute I directed Mr Doyle to file and serve the briefs of evidence in compliance with the directions of 1 June 2011. He was able to do so although he did not then file or serve a bundle of documents that the plaintiff intended to rely upon at the hearing. This was not filed until Friday 10 June 2011 which, of course, was the day set for the defendant to file his briefs of evidence in answer. Mr Reed filed his brief of evidence on 9 June 2011.

[13] On 8 June 2011 Mr Doyle made a further application for leave to present evidence from three witnesses by affidavit. He also sought to have another witness give evidence via telephone. Mr Reed did not object to the presentation of evidence by affidavit from the three witnesses named. He objected to the fourth witness giving evidence by affidavit or by telephone as he disputed her evidence and felt that it should be given in court under oath. In a minute dated 9 June 2011, Judge Travis indicated to Mr Doyle that the Court would allow the three witnesses to give evidence by way of affidavit and that the fourth witness would be allowed to give evidence by private video link but that would have to be arranged by Mr Doyle.

[14] Mr Doyle was clearly disorganised with his preparation for trial. That appeared to be the position also with his preparation for the Authority's investigation. However, it was clear that Mr Reed should not be subjected to further delays in this matter. As it transpired, the fourth witness was not available to give evidence by video link until the day after the hearing was to conclude. Accordingly, she did not give evidence at all.

[15] At the commencement of the hearing it became clear that neither Mr Doyle nor Mr Reed had adequately exchanged briefs or documents to be relied upon. Mr Doyle had not received a copy of Mr Reed's brief and Mr Reed had not received a copy of the plaintiff's bundle of documents. I adjourned the hearing for a short time

to allow this exchange to take place and for Mr Doyle and Mr Reed to have time to read the documents before proceeding. Prior to commencing with the hearing itself, they both assured me they had by then had time to read the documents and were ready to proceed.

The facts alleged by the parties at the hearing

[16] During the course of his evidence for the plaintiff Mr Doyle raised matters clearly at variance with the evidence presented to the Authority or simply not presented at the investigation at all. He reiterated that Mr Reed had received the tank storage money and the money from the sale of the scrap metal and that Mr Reed was to keep this money as a credit against holiday pay. However, as pleaded in his statement of claim, he now alleged that the calculation of holiday pay was not correct. Rather than the figure of \$3,620.40, which he accepted as owing before the Authority, he now claimed it to be \$2,243.48. He called a witness, Judy Dang, who was employed by another company of Mr Doyle's, and who was asked to update the holiday pay calculations for Mr Reed.

[17] Mr Doyle also claimed that Mr Reed had stolen money from the company while working at the Hobson Street store. Mr Doyle asked a friend to be a mystery shopper at the store. That person was given a \$100 banknote by another of the defendant's employees and asked to purchase three air beds from Mr Reed with the banknote. Mr Doyle, on finding the banknote was not in the takings for the day, alleged that Mr Reed had stolen \$100. He referred to this in his pleadings. However, as a result of the documentary evidence relied on by the plaintiff at the hearing, the amount, if stolen at all, could only have been \$50. Mr Doyle, to support his allegation of theft, relied on the affidavit of evidence of Rochelle Tietze, which Mr Reed had consented to being used in evidence as he did not dispute what she said. Mr Reed did, however, present an explanation. I shall deal with that shortly.

[18] The third ground for alleging that the company did not owe money to Mr Reed related to an alleged written employment contract. Mr Doyle argued that this bound Mr Reed to the giving of four weeks' notice of termination of employment or forfeiture of equivalent wages in lieu of notice. The allegation by Mr Doyle was that

at the commencement of employment in February 2006, Mr Reed was asked to sign a written employment contract, which he was given at the time. It is clear that Mr Reed never signed the agreement if it was given to him. He denied that he was given an employment agreement to sign. Mr Doyle was unable to produce in evidence any signed agreement from Mr Reed but, instead, produced signed employment contracts from two other employees, maintaining that they were evidence of the terms and conditions of employment of Mr Reed.

[19] Before dealing with the evidence of Mr Reed I just mention the three affidavits filed by Mr Doyle on behalf of the plaintiff and with the consent of Mr Reed. The first affidavit was from Ms Tietze and I have largely dealt with her evidence. One further fact is that after she left the store with the air beds, she returned them to the employee of the plaintiff who had originally given her the \$100 banknote at the direction of Mr Doyle. She indicated that she was not given a receipt for the payment she gave to Mr Reed. The second affidavit is from Kim O'Donnell who is a concrete tank maker. He confirmed that there was an agreement that he reached with Mr Reed to store concrete tanks on a property owned by the plaintiff. The rate agreed for storage was \$40 per tank. He stated that he paid Mr Reed in cash every time he delivered the tanks. He stated that he gave Mr Reed the sum of \$1,200 in cash for the first 30 tanks that were stored on the property. He confirmed that he subsequently paid Mr Reed in cash for further tank storage after the initial payment. The final affidavit is from William Mulholland who confirmed that he purchased scrap metal from Mr Reed when Mr Reed was working on the same piece of land of the plaintiff's on which the tanks were stored. The payment of \$1,000 in cash was given to Mr Reed for the scrap metal at the time that the scrap was removed from the property. This occurred in approximately October or November 2009. That, of course, is a date after the date when Mr Doyle maintains Mr Reed apparently ceased employment with the plaintiff and to which date his holiday pay was calculated.

[20] So far as the evidence Mr Doyle proposed calling from a witness in the South Island by way of video link is concerned, I am aware from the proposed brief that this evidence related to the allegation that Mr Reed was given a written employment contract to sign at the outset. Even if that evidence was given and accepted, it would be of little assistance because it is clear that even if Mr Reed was given a written

employment contract, he did not sign it. However, the evidence is not before me and I do not consider it.

[21] In response to these allegations by Mr Doyle and the witnesses, Mr Reed denied ever receiving an employment contract to sign at the outset of his employment. At the time of his employment he was a retiree who had recently recovered from an illness and agreed to be employed by a company then known as Doyles Outdoors Limited on a temporary basis pending the company employing a full-time employee. The employment of the full-time employee did not eventuate and Mr Reed's health apparently improved so that he continued on as an employee on the same basis. That continued until he terminated his employment. He stated that initially he was employed as a temporary employee on a week by week basis responsible for nothing apart from overseeing the security of the buildings at the site where he worked.

[22] Mr Reed indicated that after a while his employment was amended. Whereas he was previously employed by Doyles Outdoors Limited, I infer that he subsequently came to be employed by the plaintiff and there does not appear to be any dispute that he was an employee of ASDL at the time of termination of employment. He indicated that he was instructed to endeavour to produce income from the plaintiff's warehouse. He had some difficulty with the work, with some of the product being stacked up to 20 feet in height. He could not climb and was unable to operate a forklift. Another employee was sent from the city office to assist him in this. Mr Reed stated that at the time and of his own volition he instigated a notebook to record details of sales and each day endeavoured to reconcile the sales with the cash or money received. Mr Doyle, amongst the documents he produced, included an undated page of Mr Reed's handwritten sales records (made at a time when Mr Reed was working in the city store), which was alleged to show the sale of the air beds leading to the allegation of theft. By virtue of the evidence of Ms Tietze that particular document must have been Mr Reed's work sheet for a date in December 2009 as it was at that time that she said she purchased the air beds from Mr Reed at the Hobson Street shop. That further indicates to me that the calculations in the evidence of Ms Dang as to holiday pay are erroneous because she regarded the date of termination as August 2009 and calculated holiday pay to 9 August 2009.

While Mr Reed agreed that there had been some change in method of payment after August 2009, I accept the Authority's finding that he was still an employee from that time. That finding was not put in issue in evidence before me.

[23] Mr Reed continued in his evidence to state that while working on the warehouse site he was required to sort stock for distribution to outlet stores owned by Mr Doyle and also to destroy product damaged by vermin infestation. During the tenure of employment at this time Mr Doyle asked Mr Reed to supervise the clearing of a 10 acre property Mr Doyle indicated he wished to sell. It was during this period that Mr Reed, while supervising the clearing of the site, entered into arrangements for storage of tanks and the sale of scrap metal to generate money to pay to contractors and to cover expenses involved in the clearing of the site. Mr Reed alleged the payments in and the payments out were recorded in an orange book, being the orange book referred to by the Authority Member in her determination. She stated that Mr Doyle had this book at the investigation meeting but failed to produce it. It was produced by Mr Doyle during the course of evidence before me. The book contains pages recording money received including the figures, which have been mentioned as received for the storage of the tanks and the sale of the scrap metal. Some of the payments out from that money are recorded in the book but Mr Reed, while looking at it at the hearing (and it was a book created by him), alleged that Mr Doyle has torn pages from it to disguise the fact that of money he received, he had paid out to contractors and such payments were recorded by him in the book as such. Certainly the book has been tampered with and it is clear that at least two pages have been torn from it. Mr Doyle, when questioned about this, alleged that the book is in the same form that he received it from Mr Reed at the outset.

[24] Therefore, Mr Reed conceded that, while he was clearing the site, he did receive money. This was from the tank storage, rental from the site being used for the parking of school buses and some cash stock sales that, I presume, include the sale of the scrap metal. He stated that outgoings he paid from this money were for water tank supplies, electrical repairs, machine maintenance, diesel for the delivery van, LPG for the fork hoist, and other general expenses, all of which he recorded in the book and held with relevant invoices and GST receipts and subsequently handed on to Mr Doyle.

[25] In his evidence, Mr Reed dealt with the affidavit evidence of Mr O'Donnell and Mr Mulholland. He stated that he accepted and acknowledged the payments received but, of course, the distribution of the funds is in dispute. So far as the evidence of Ms Dang is concerned as to the calculation of holiday pay, he stated that it was confusing and that all that he received from her was a computer printout showing \$3,620.40 owing for holiday pay as at 9 September 2009. During her evidence Ms Dang maintained that for the period 24 December 2008 to the week ending 11 January 2009, the company's computer records wrongly showed Mr Reed as having received ordinary pay rather than holiday pay for the nine ordinary working days' leave he is alleged to have taken. The figures shown amount to \$525 per week or \$105 per day. For that period she has accordingly recalculated what should have been the correct holiday pay for that period and reduced the figure originally calculated for holiday pay from \$3,264.08 down to \$2,243.48.

[26] Mr Reed stated in evidence that he took the statutory holidays for the period in question but that after the new year public holidays, Mr Doyle required him to assist with a job clearing stock in the Hamilton store, which had closed down. In view of the other evidence disclosing the way Mr Doyle treated Mr Reed as an employee, I consider it is extremely likely that Mr Reed was asked to discontinue his annual leave in that way. When Mr Reed raised this Mr Doyle did not put any contrary view to him in cross-examination, nor did he seek leave to call evidence to rebut it. Mr Reed's evidence is also corroborated by the fact that for that period, the computer records showed he was in receipt of ordinary pay rather than holiday pay.

[27] So far as the allegation of theft of the \$100 banknote is concerned, Mr Reed stated that while he was working in the shop it is likely that he did sell the air beds. He stated that he recalled the \$100 banknote. He said that he exchanged it for five \$20 banknotes, which he placed with the money in the cash drawer for the daily banking. He said that he explained this to Mr Doyle at the date of termination of employment which, from Ms Tietze's evidence, was clearly in December 2009 rather than August 2009, being the time to which his holiday pay was calculated. He also explained that so far as the document produced by Mr Doyle as to that day's takings is concerned, he was in the habit of simply adding in further sales at the end of the day if there was an excess of funds received over recorded sales. He stated that the

document in any event was a record he made for his own purposes and that he was not instructed to record sales in any way by Mr Doyle, nor was he instructed to issue receipts. The document, which is document D in the plaintiff's bundle, shows that on the day in question sales of \$841 are recorded with takings of \$843, an excess of \$2. There is a record for sale of the air beds of \$50 and Mr Reed maintains that the final three items, which total \$65, could include the balance of the \$100 banknote. He is adamant that he replaced the \$100 banknote with the five \$20 banknotes as he preferred to keep a single banknote in the cash that he personally held.

[28] It would be apparent from all of this that at the end of the hearing, with the allegations and counter-allegations, the evidence in its entirety was in a somewhat confused state. It was also clear that the plaintiff's time and wage records for Mr Reed were inadequate or non-existent. This was also commented upon by the Authority Member in her determination. So far as the allegation of the written employment contract is concerned, when I put it to Mr Doyle that he was unable to produce any signed written contract he maintained that as a contract was given to Mr Reed to sign, and as it was not returned within 30 days, Mr Reed was deemed to have accepted its terms and conditions. Mr Doyle was unable to point to any legal authority for this proposition.

[29] Mr Reed in his evidence stated that in view of the fact that he had not received his wages for two weeks, the unjustified allegation of theft was the last straw and he left employment that day. He does not, however, now dispute the Authority Member's finding that he is only entitled to one week's unpaid wages.

Conclusions

[30] The first issue to consider is the calculation of holiday pay. It is clear from the evidence that Mr Reed remained in employment beyond the end of August 2009 and should be entitled to holiday pay to the time of termination of his employment in December 2009. There was an allegation before the Authority that, for the latter part of the employment, Mr Reed was an independent contractor but the Authority Member rightly determined on the evidence that that could not be sustained. Mr Doyle certainly did not pursue that as an issue at the court hearing.

[31] Ms Dang's calculations of holiday pay relate to the period of week ending 5 February 2006, when Mr Reed commenced employment, to 9 August 2009. Her workings and accompanying documents are contained in exhibit A in the bundle of documents produced by Mr Doyle. I found her calculations confusing and on three occasions during the evidence she conceded that they were not correct and she had deducted too much from Mr Reed. Mr Doyle, during the course of the hearing, strongly maintained that if his other arguments to the effect that Mr Reed in fact owed the company money were not accepted, at the very least the holiday pay should be reduced as calculated by Ms Dang. I do not accept this argument. But in any event, any errors in calculation by Ms Dang are not relevant because I accept Mr Reed's evidence that he did not take leave on the nine days in question but in fact worked. Mr Doyle, because of the inadequacy of the time and wage records, is unable to prove Mr Reid was on holiday for the days in question. There are some entries in computer printouts called "Employee Audit Trail" for Mr Reed and "Maintenance Audit Trail", which covers other employees as well but seems to also contain omnibus entries of numerous events occurring within the company's day to day trading and are not just limited to employees. The "Maintenance Audit Trail" documents continue to record the issue with Mr Reed's holiday pay for the period in December 2008/January 2009 in an entry dated as late as 17 June 2009. It is clear that if there was a genuine problem the company was taking no steps to rectify it. That again would seem to be corroborative of Mr Reed's assertion that he took no further leave after the statutory holidays and returned to work as required by Mr Doyle.

[32] Further, if the holiday pay was to be for a different amount than the \$525 Mr Reed was receiving for ordinary pay, there is a contradictory item in the computer printouts in that for the week ended 18 January 2009 there is an entry for holiday pay for that week but it is shown at a figure of \$525 being ordinary pay rather than a different figure for holiday pay. If Mr Reed was on leave for that week, which I now consider unlikely, why did the column in the printout, which was meant to show holiday pay, include an amount that was clearly equivalent to ordinary pay?

[33] Having analysed Ms Dang's calculations, I am of the view that what she has done, although she did not say it in evidence, is calculated Mr Reed's unpaid and

outstanding holiday pay entitlement for the whole period of employment to 9 August 2009 and then retrospectively subtracted the ordinary pay for the December 2008/January 2009 period as being a period of leave when she believed that Mr Reed was actually paid while on leave. However, as I have indicated, this would not be a valid deduction if Mr Reed did not actually take leave then. I have accepted his evidence that he returned to work in January 2009 after the public holidays. Ms Dang's calculation of the deduction is also excessive in any event because she has effectively deducted Mr Reed's ordinary pay plus a further 8 per cent for the nine days in question. The correct amount would, if the deduction was justified, simply be the alleged overpayment of ordinary pay.

[34] There are, therefore, a number of reasons why I am not prepared to accept the contention of Mr Doyle in respect of the calculation of holiday pay. The first is that when Ms Dang first did the calculation she indicated to Mr Reed that the proper figure for his holiday pay was \$3,620.40 and I accept Mr Reed's evidence that he was provided with a copy of the computer printout disclosing this. He attached it to his evidence. Secondly, however, for the reasons expressed earlier, I accept Mr Reed's evidence that he did not in fact take holidays for the period Mr Doyle claims he was overpaid. Finally, and most importantly, I am of the view that Mr Reed was entitled to holiday pay right up to the date of termination of employment in December 2009 and that the figure of \$3,620.40, which the Authority Member has determined is owing, is probably a lower sum than Mr Reed's true entitlement. However, I have no evidence to enable me to calculate what the further entitlement should be and I perceive that Mr Reed is not claiming it now. The figure of \$3,620.40 is the calculated figure in the computer printouts as at 16 August 2009. For the reasons I have already given, that, in my view, is the correct figure for unpaid holiday pay owing as at 16 August 2009.

[35] As to Mr Doyle's assertion that Mr Reed owes the plaintiff company money by way of forfeiture of pay in lieu of notice under the alleged employment contract, that argument is simply not tenable. There was no written employment agreement between Mr Reed and the company. In the absence of any contractual provision, reasonable notice would be required. However, in circumstances involving Mr Doyle wrongfully accusing Mr Reed of theft, a situation of constructive dismissal

arose. While Mr Reed is not making any claim in that regard, in such circumstances it would not be reasonable to require him to give any period of notice and certainly he should not be required to forfeit any pay in lieu of notice.

[36] So far as the allegations relating to the payments received by Mr Reed in respect of the tank storage and scrap metal sales are concerned, I am of the view that there has been some tampering with the orange book Mr Doyle produced. In any event, the pages remaining in the book show some disbursement of funds and I regard Mr Reed's explanation that he made other payments from the money received on the company's behalf to be more likely correct. It is clear that Mr Doyle had given him the job of clearing the site. There is no evidence of any other funds received by Mr Reed from Mr Doyle to cover the expenses of doing so and it seems to me very likely that from the funds which Mr Reed received, he disbursed money to pay for contractors and the like and those payments are partially recorded in the orange book.

[37] So far as the allegation of theft is concerned, as I have indicated, the allegation by Mr Doyle that the sale of the air beds was not recorded and that Mr Reed simply kept the cash received, cannot be sustained. The record Mr Reed kept for his own purposes clearly records a sale of air beds and shows a figure received of \$50. I understand Mr Reed completed this list sometimes retrospectively and it may well be that he recorded the wrong amount which would then account for the excess of cash over recorded sales at the end of the day. He then recorded three further sales so that his record balanced but he probably did not need to do that if he had corrected the sum received from sale of the air beds to the true amount. That, of course, is not an ideal situation but it was the responsibility of Mr Doyle and his company, not Mr Reed, to establish proper business methods for Mr Reed to record sales. They failed to do so. They have to accept the consequences. Certainly there was insufficient evidence to sustain Mr Doyle's allegation of theft.

Disposition

[38] For these reasons, the challenge by ASDL fails. I endorse the findings of the Authority Member in her determination although it is clear that by the time the

challenge came to this Court, the claims by ASDL had been modified. It is also clear that further evidence was presented to the Court, which was not available to the Authority Member. Nevertheless, even though I suspect Mr Reed is probably entitled to more holiday pay for the period he worked between the end of August 2009 to the termination of employment in December 2009, he is not claiming it. I reconfirm the determinations as orders of this Court. ASDL, the plaintiff, is ordered to pay Mr Reed outstanding holiday pay of \$3,620.40 gross, together with arrears of wages of \$500 net. I have no evidential basis on which to depart from the determination on the outstanding wages and, indeed, Mr Reed accepted that part of the determination in any event.

[39] As Mr Reed represented himself, he is not entitled to any award of costs. However, if he has incurred any disbursements in having to prepare for or attend at trial, he should submit a memorandum as to those expenses within 14 days. He is entitled to reimbursement of reasonable disbursements.

M E Perkins
Judge

Judgment signed at 3.30 pm on Wednesday 22 June 2011