## IN THE COURT OF APPEAL OF NEW ZEALAND

## I TE KŌTI PĪRA O AOTEAROA

CA419/2019 [2019] NZCA 569

BETWEEN A LABOUR INSPECTOR OF THE

MINISTRY OF BUSINESS,

INNOVATION AND EMPLOYMENT

**Applicant** 

AND TOURISM HOLDINGS LIMITED

Respondent

Court: Clifford and Goddard JJ

Counsel: A E Scott-Howman and S E Blick for Applicant

S C Langton for Respondent

Judgment:

19 November 2019 at 11.00 am

(On the papers)

## JUDGMENT OF THE COURT

- A The application for leave to appeal is granted.
- B The approved questions of law are:
  - (a) What is the meaning of "not a regular part of the employee's pay" in s 8(1)(c)(i) of the Holidays Act 2003 for the purpose of calculating ordinary weekly pay under s 8(2) of the Holidays Act?
  - (b) If productivity or incentive-based payments are a regular part of the employee's pay, do those payments have to be "pay the employee receives under his or her employment agreement for an ordinary working week" for the purpose of calculating ordinary weekly pay under s 8(2) of the Holidays Act?

## **REASONS OF THE COURT**

(Given by Goddard J)

[1] The application for leave to appeal is granted.

[2] The approved questions of law are:

(a) What is the meaning of "not a regular part of the employee's pay" in

s 8(1)(c)(i) of the Holidays Act 2003 for the purpose of calculating

ordinary weekly pay under s 8(2) of the Holidays Act?

(b) If productivity or incentive-based payments are a regular part of

the employee's pay, do those payments have to be "pay the employee

receives under his or her employment agreement for an ordinary

working week" for the purpose of calculating ordinary weekly pay

under s 8(2) of the Holidays Act?

[3] These questions focus on the application of s 8 to the facts as found by

Judge Smith, and on the basis of the Judge's finding at [38] of the judgment about

when the commission was payable to the driver as a matter of interpretation of

the employment agreement. To avoid doubt, the leave granted extends to questions as

to the relevance and implications of those findings when applying s 8.

Solicitors:

LangtonHudsonButcher, Auckland for Respondent