

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