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## INDUSTRIAL APPEALS COURT AT MELBOURNE

**CRAMPTON v TUCKER****Leckie J, Deputy President and ER Gwyther Esq, Employers' Representative****16 February 1979**

**LABOUR AND INDUSTRY – FAILURE BY EMPLOYER TO PAY WAGES IN LIEU OF NOTICE ON DISMISSAL OF EMPLOYEE – WHETHER FAILURE TO PAY WAGES AND HOLIDAY PAY ARE CONTINUING OFFENCES – "CONTINUING OFFENCES" – FINDING BY MAGISTRATE THAT CONTINUING OFFENCE OCCURRED – WHETHER MAGISTRATE IN ERROR: LABOUR AND INDUSTRY ACT 1958, S192.**

**HELD:** The information and summons was validly laid.

There is clear authority that a failure to pay wages and a failure to pay holiday pay are continuing offences. Where the law prohibits the doing of an act, if a person does that act he commits an offence and that offence is there and then complete; where the law requires the doing of an act and a person fails to do that act he commits an offence for so long as that act remains undone until such time as the obligation is otherwise terminated.

*Barelli's case* [1965] VicRp 79; (1965) VR 615, applied.

**LECKIE J:** This is an appeal against a conviction for failing to pay a week's wages *in lieu* of notice upon the dismissal of an employee. The employment in question was terminated on 5.8.1976. The information was laid and the summons issued on 28.10.1977. The question is whether failure to pay a week's wages *in lieu* of notice is a "continuing offence". If it is not and the offence was complete on or about 5.8.1976 then the summons was clearly issued beyond the period of 12 months provided for by the *Labour and Industry Act* 1958 s192. There is clear authority that a failure to pay wages and a failure to pay holiday pay are continuing offences. In *Dickman v Sirianni* (unreported) Gray J reviewed the authorities relating to this question of whether certain offences under the *Labour and Industry Act* are continuing offences or not. He "ventured to summarise" what was said in *R v Industrial Appeals Court Ex Parte Barelli's Bakeries Pty Ltd* [1965] VicRp 79; (1965) VR 615 as:

"Where the law prohibits the doing of an act, if a person does that act he commits an offence and that offence is there and then complete; where the law requires the doing of an act and a person fails to do that act he commits an offence for so long as that act remains undone until such time as the obligation is otherwise terminated."

I can see no distinction between failure to pay money *in lieu* of notice of termination and failure to pay wages or holiday pay. I therefore rule that on its face the information was validly laid and the summons issued.