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INDUSTRIAL APPEALS COURT

GARLICK v INGE BROS PTY LTD (No 2)**Leckie J, President, G Lane Esq and NA Gibbs, Esq, Employers Representatives****27 August 1975****LABOUR AND INDUSTRY – "ANNUAL HOLIDAY" CONSIDERED (UNDER CLAUSE 6 OF THE LABOUR & INDUSTRY (ANNUAL HOLIDAY) ORDER 1967; LABOUR & INDUSTRY ACT 1958, S144.****The words 'annual holiday' as used in s143(6) of the *Labour and Industry Act 1958* refer to the period of absence from work as distinct from the payment.****THE PRESIDENT:** ... The last information regarding Flynn alleges contravention of Clause 6 of the *Labour and Industry (Annual Holidays) Order 1967*, which for present purposes is the same as s144 of the Act which it replaced.

It is to be seen that the information alleges that Flynn had not taken any part of the annual holiday to which he became entitled. The evidence of both Flynn and Stonehouse is to the effect that they took the appropriate period away from work in each year of employment. It was contended by Mr Bazant, on behalf of the Appellant, that such absence from work did not constitute an 'annual holiday' under the Act unless the worker was paid his ordinary pay for the period. This is a matter of law which falls to me to decide. I am quite unable to accept this submission.

Section 143(1) of the Act provides that 'except as otherwise provided in this Division every worker shall at the end of each year of his employment be entitled to an annual holiday of two weeks on ordinary pay'.

To my mind, this imposes on the employer two obligations; one, to give the necessary leave of absence and, two, to pay the worker his ordinary pay for the period. Sub-section 6 (b) provides:

'(b) The employer shall pay each worker in advance before the commencement of the worker's annual holiday his ordinary pay for the holiday period'.

Here the words 'annual holiday' must refer to the period of absence from work as distinct from the payment. I can see no reason to read the phrase otherwise than in its ordinary meaning of authorised absence from work.

The charges are laid either under the former s144 of the Act or under Clause 6 of the *Annual Holidays Order*. In each case the provisions became operative when

'(a) the employment of a worker who has become entitled to the annual holiday provided by this Division is terminated; and
(b) the worker has not taken any part of that holiday'.

As the evidence is that both Flynn and Stonehouse had, in fact, taken their annual holiday each year, the provision does not operate and the offence alleged has not been committed. It may well be that some other offence has been committed but that has not been alleged. In other words, to use the parlance of the Police Court, the charges are laid under the wrong section.