

SUPPRESSION OF NAMES CONTAINED  
IN THIS DETERMINATION ARE SUBJECT  
TO A SEPARATE ORDER ATTACHED

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2013] NZERA Wellington 107  
5417206

BETWEEN 1,  
2,  
3,  
4,  
5,  
6,  
7,  
8,  
9,  
10,  
11,  
12,  
13.  
Applicants

AND X  
Respondent

Member of Authority: P R Stapp

Representatives: Andrew Scott Howman, Counsel for the Applicants  
Jaesen Sumner, Counsel for the Respondent

Investigation Meeting: Telephone conference and on the papers 4 September  
2013 at Wellington

Date of Determination: 4 September 2013

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**ORAL DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Each of the applicants has claimed that they are each owed arrears of remuneration not paid by X. X initially disputed the amounts claimed from each of the applicants and opposed any order relating to the claim. Following an earlier

telephone conference between the parties' representatives, X, through its representatives, filed a summary of calculations of outstanding payments dated 14 August 2013 for each of the applicants. The applicants have accepted the sums as calculated by X.

### **The issues**

[2] There are two issues. First what the applicants are owed has been conceded by the applicants on the basis of a summary of outstanding payments provided by the respondent (filed on 14 August 2013 under cover of an email from the respondent's lawyers).

[3] Second there is an issue about how the amounts owing are to be paid.

### **The decision by the Authority to proceed**

[4] The applicants have requested a determination to avoid any delays in getting paid. X opposed this on the grounds that there is some agreement with the applicants for payments to be made with them each forfeiting the full amounts.

[5] During the course of the telephone conference I decided to proceed with making a determination in this matter. The decision has been given without a recording and the reasoning and details will be more fully provided in issuing the written determination. My reasons for proceeding are.

- i. That there is no longer any dispute on X's figures of the sums of remuneration payable to each applicant. This is supported by the summary of the amounts payable for each applicant provided by X.
- ii. That today was the first time that the respondent has raised an issue about there being some agreement from the applicants to forfeiture an amount for a payment to be made to each of them. No details were provided. The summary of money outstanding does not support this claim. The claim has never been properly pleaded in the statement in reply and never raised as a defence at any earlier stage before the Authority.
- iii. That any claim on any issue as to arrangements and/or agreement for payment can be pursued in enforcement actions.

[6] I accept Mr Scott Howman's request to proceed to avoid any delay in this matter.

### **The facts**

[7] Each of the applicants was employed by X. X owes each applicant arrears of remuneration. Demands have been made for the payment of the amounts, but X has failed to pay. The amounts outstanding are as follows:

1	\$78,541.48 gross
2	\$28,004.68 gross
3	\$11,264.89 gross
4	\$36,874.12 gross
5	\$37,256.10 gross
6	\$23,298.54 gross
7	\$15,775.66 gross
8	\$25,414.40 gross
9	\$222,855.85 gross
10	\$80,113.35 gross
11	\$111,749.29 gross
12	\$49,556.96 gross
13	\$80,912.36 gross

### **Orders of the Authority**

[8] X is to make the following payments to:

1	\$78,541.48 gross
2	\$28,004.68 gross
3	\$11,264.89 gross
4	\$36,874.12 gross
5	\$37,256.10 gross

6	\$23,298.54 gross
7	\$15,775.66 gross
8	\$25,414.40 gross
9	\$222,855.85 gross
10	\$80,113.35 gross
11	\$111,749.29 gross
12	\$49,556.96 gross
13	\$80,912.36 gross

[9] I reserve the claims for interest on the above amounts because no details have been calculated and I am not clear about the claimed timeframe for any interest claimed. Costs are reserved.

[10] This leaves the outstanding issue about how the above amounts are to be paid where there appears to be no agreement. The suggestion has been made for further discussions to take place by the applicants and they have indicated that they are willing for discussions to be held with the possibility of mediation and including confidentiality on the arrangements. I note that X is in agreement to meet with the applicants in mediation. I would commend these further discussions and mediation to the parties in an endeavour to try and resolve the remaining issue.

**P R Stapp**  
**Member of the Employment Relations Authority**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

5417206

BETWEEN            1,  
                             2,  
                             3,  
                             4,  
                             5,  
                             6,  
                             7,  
                             8;  
                             9,  
                             10,  
                             11,  
                             12,  
                             13  
                             Applicants

A N D                X  
                             Respondent

Member of Authority:    P R Stapp

Representatives:        Andrew Scott Howman, Counsel for the Applicants  
                                 Kirsty Berry, Counsel for the Respondent

Investigation Meeting:   Telephone conference on 5 September 2013 at  
                                 Wellington

Date of Order:            5 September 2013

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**ORDER OF THE AUTHORITY**

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**Prohibition on Publication**

[1]    Following an oral determination on 4 September [2003] NZERA Wellington 107 the respondent has applied for a prohibition on the publication of names in the

determination. Its reasons for the application are to assist facilitating the payment of the sums outstanding to the applicants.

[2] The applicant's representative has no instructions and does not support or oppose the application. There is a need for the parties to further discuss how the money is to be paid and I accept that in the interim an order that the names and information likely to identify the parties in the determination be prohibited from publication. There was agreement to this approach and a further telephone conference has been arranged for Friday 13 September 2013. Therefore, I agree to prohibit the publication of the names of the parties and information likely to identify the parties in the determination until this order is varied and/or revoked by the Authority.

[3] My reasons for the interim order are:

- i. That for the time being the parties will all be assisted by a prohibition order to make arrangements for the payments to be paid.
- ii. That the parties are to still to enter into further discussions on the issue about how the payments will be made, and there is a possibility of mediation. In this regard I am conscious that there may be a settlement between the parties and to assist that being achieved non publication of the names will assist that in the meantime.

[4] I order that the names and information likely to lead to their identity be prohibited from publication in the oral determination [2003] NZERA Wellington 107 until the order is varied and/or revoked by the Authority.

**P R Stapp**  
**Member of the Employment Relations Authority**