

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 190
5281094
5322615

BETWEEN ANIL SECURITIES LIMITED
Applicant

AND DEV KUMAR SIDANA
Respondent

Member of Authority: Alastair Dumbleton
Representatives: Anil Bhatia, advocate for Applicant
Respondent in person
Investigation Meeting: 6 May 2011
Determination: 9 May 2011

DETERMINATION OF THE AUTHORITY

Application to reopen investigation

[1] Anil Securities Ltd has applied to have the Authority reopen an investigation, pursuant to clause 4 of Schedule 2 of the Employment Relations Act 2000.

[2] Under that provision the Authority may order an investigation to be reopened upon such terms as it thinks reasonable and in the meantime to stay the effect of any order previously made by it.

[3] Orders previously made by the Authority in this case are contained in determinations dated 2 August 2010 (under AA344/10) and 10 March 2011 ([2011] NZERA Auckland 91). The first order required Anil Securities pay Mr Dev Sidana \$2,907 arrears of wages, pursuant to s 131 of the Act. The company was also ordered to pay Mr Sidana \$70 in reimbursement of the filing fee paid by him to bring his application.

[4] The second order, made under s 137 of the Act, required Anil Securities Ltd to comply with the 2 August determination and orders contained in it. The company was ordered to pay Mr Sidana \$2,907 and \$70 in reimbursement of the filing fee and an additional \$71.56 as the filing fee on the application for a compliance order. The time ordered for compliance was within 14 days of service of the 10 March determination.

[5] As the 2 August determination records, there was no appearance at the investigation meeting by or on behalf of Anil Securities Ltd, but in making the orders the Authority was satisfied with the evidence before it that Mr Sidana's statement of problem and a notice of investigation meeting had been served on the company at its registered office, in accordance with the Employment Relations Authority Regulations and directions of the Authority.

[6] Mr Sidana had been asked by the Authority to serve those documents himself on Anil Securities Ltd, as the service procedure normally used by the Authority had not lead to the documents being left at the registered office and neither had they been collected from the place where Anil Securities could uplift them.

[7] Although Mr Sidana had been directed to serve the documents personally at the address of the registered office he engaged a courier firm for that purpose. That firm provided him with a track and trace result. It indicates that service was effected in the Titirangi area but does not show the address. It also indicates that the courier signed the track and trace result with the name "Anil" and the markings "L/B". As the form itself explains, L/B is short for letterbox. It appears the documents were left in a letterbox at a Titirangi address but it is only assumption that that address was the same one as the registered office.

[8] In the result the Authority cannot now be satisfied that there was effective service. Mr Bhatia has always maintained that he never saw the documents. This seems quite possible but it is also a situation largely of his own making, because he has used as a registered office and address for service a residence in the Waitakeres where he lived until August 2009. After he shifted from there he took no steps to change the registered office or to collect mail that was still going there addressed to Anil Securities Ltd.

Determination

[9] In the circumstances therefore I consider it is just to grant the rehearing application, subject to the following conditions being met:

- (a) If Anil Securities Ltd, as indicated by Mr Bhatia is the case, wishes to bring a claim against Mr Sidana it must do so by 5pm on Friday, 13 May 2011. The company must by that time and date lodge in the Authority a statement of problem complying with the Regulations and instructions on the Authority's standard application form; and
- (b) Anil Securities Ltd must deposit \$2,000 with the Authority by 5pm on Wednesday, 18 May 2011. That sum will be kept in trust by the Authority until the final determination of Mr Sidana's claim. If Mr Sidana is again awarded \$2,907 outstanding wages, then the \$2,000 in trust will be paid to him at the direction of the Authority. If he is not awarded any sum, then the \$2,000 can be paid back to Mr Bhatia or his company; and
- (c) Anil Securities Ltd is also to pay to the Authority for the immediate use of Mr Sidana the amount of \$71.56, the fee paid by him to bring his application for a compliance order;
- (d) Mr Bhatia on behalf of Anil Securities Ltd is to supply by 5pm on 18 May 2011 a written statement of his evidence about the relationship or association he or his company had with Mr Sidana at relevant times. He should attach to the statement any documents that the Authority does not already have and he should supply statements of evidence for any witnesses who he considers will assist his case. His statement is also to cover the claim Anil Securities Ltd intends to bring against Mr Sidana.

[10] Provided the above conditions of the reopening order have been met in full, there will be a stay of the orders granted in the determinations dated 2 August 2010 and 10 March 2011.

[11] Once the conditions have been met Mr Sidana will be required by 25 May 2011 to provide the Authority with a written statement of his evidence in support of

his claim to recover \$2,907. His earlier statements will be taken into account but he should review the subsequent account that has been given by Mr Bhatia on 8 March 2011 of his engagement or connection with Anil Securities Ltd. In his statement Mr Sidana should comment on any of that factual information and all other relevant matters of fact. If Mr Sidana has witnesses he wishes to attend the Authority meeting, he should also provide by 25 May a statement of their evidence too.

[12] Once all the conditions set out above have been met the Authority will arrange for an investigation meeting to take place at which Mr Bhatia and Mr Sidana will be examined on their evidence again and will have the right to ask questions of each other. The Authority will then hopefully be in a position to make a final determination on all matters between the parties.

A Dumbleton
Member of the Employment Relations Authority