

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 227/10
5287822

BETWEEN RIMAPUTA ABERAHAMA
Applicant

AND FUSION BUILDING BOP
LIMITED
First Respondent

AND FUSION BUILDING NZ
LIMITED
Second Respondent

Member of Authority: Alastair Dumbleton

Representatives: Teo Kotai, advocate for applicant
No appearance for Respondents

Investigation Meeting: 19 February 2010

Determination: 14 May 2010

DETERMINATION OF THE AUTHORITY

[1] The applicant Mr Rimaputa Aberahama has brought a claim to recover arrears of wages and holiday pay from his former employer in relation to work he performed for about eight months in 2009 as a labourer on construction sites in the Hamilton and Rotorua areas.

[2] Following an investigation meeting held on 19 February, Mr Aberahama formally complained to a Labour Inspector. The determination of his claim was then adjourned to allow for any application that the Inspector might decide to make under s 234 of the Employment Relations Act 2000. Under that provision a director of a company may be determined liable for minimum wages and holiday pay.

[3] The Authority has now been advised by the Inspector that he has concluded his investigation and that no application will be made under s 234. This is because the sole director of one or both respondent companies is legally bankrupt. Mr Aberahama's claim can now be determined from the facts established by the Authority's investigation.

[4] I am satisfied that his employment relationship was with the second respondent company, Fusion Building NZ Limited. At times when Mr Aberahama did receive wages for his work he was given a pay advice slip with that name printed on it. He also received a memorandum on or about 17 November 2009 from Mr Jacob Johnstone apologising for the failure to pay his wages in full when due. This too was in the name Fusion Building NZ Limited.

[5] While Jacob Johnstone is shown as being a director of the first respondent Fusion Building BOP Limited, it did not exist as a company until early December 2009, by which time Mr Aberahama had finished employment working under the supervision of Mr Johnstone.

[6] I am satisfied from information supplied by Mr Aberahama that he is owed \$1,670 as wages earned for work he performed until the end of November 2009. Further, I am satisfied that he is owed \$721.40 as annual holiday pay, which has been calculated as 8% of his total gross earnings (\$9,017.48) for the period of employment lasting less than 12 months.

[7] Fusion Building NZ Limited is to pay interest on the outstanding wages and holiday pay at 4.5% per annum from 1 December 2009 until paid in full. The second respondent company is also to pay \$70 to Mr Aberahama in reimbursement of the filing fee on this application.