

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Alloy Yachts International Limited (Applicant)
AND Jonathan Philip Ewins of Auckland (Respondent)
REPRESENTATIVES Graeme Eddy for Applicant
No appearance by Respondent
MEMBER OF AUTHORITY Robin Arthur
INVESTIGATION MEETING 4 December 2006
DATE OF DETERMINATION 4 December 2006

DETERMINATION OF THE AUTHORITY

[1] The applicant seeks an order requiring the respondent to repay money lent to him to purchase tools through a staff account.

[2] The respondent did not attend the scheduled investigation meeting. After waiting for 30 minutes after the appointed time I continued the meeting. I am satisfied that the respondent was properly notified of the meeting through a notice sent to an address that he provided to the respondent's human resources manager Graeme Eddy. An Authority support officer also left messages on the respondent's cellphone on several occasions before the investigation meeting was notified. There was no response to those messages.

[3] On the basis of Mr Eddy's affirmed and unanswered evidence I am satisfied that the respondent owes the applicant the amount of \$998.82 for tools he purchased through the company staff account.

[4] The applicant company makes "super yachts" and presently employs around 300 staff.

[5] It provides a subsidy for the purchase of certain tools by staff. The company pays half the cost and retains half ownership in such tools for one year. After one year the tool is wholly owned by the employee. If the employee leaves within one year, a portion of the subsidy must be repaid.

[6] The respondent worked for the applicant from 5 September 2005 to 20 February 2006 as a marine cabinet making apprentice. He was dismissed for dishonesty. He took his subsidised tools with him when he was dismissed. At that time the balance of his staff account, including the cost of subsidised tools, was \$1566.93. A portion was recovered from his final pay leaving a balance of \$998.82.

[7] Following his dismissal the respondent agreed to pay this balance and asked for a record of his outstanding staff account to be sent to him. This was done but no payment was received from him.

[8] On 11 July 2006 Mr Eddy spoke by telephone with the respondent who again agreed to pay the balance owed. He provided Mr Eddy with a new contact address and took details of a company bank account into which he undertook to pay \$100 a fortnight from 20 July. No

payments were received and the applicant lodged an application with the Authority seeking an order for repayment. It also seeks interest on the amount owed.

Determination

[9] I am satisfied that the applicant is entitled to an order for payment of the amount owed by the respondent with interest. The respondent has twice undertaken to make repayments by instalments and failed to do so without explanation either to his former employer or the Authority. On this basis I consider it fit to also order interest on the amounts owed, including a daily interest rate to apply under the debt is paid. Interest is to be paid at the annual rate of 8.65 per cent, being today's 90-day bill rate of 7.65 per cent plus one per cent, which I take to be a reasonable market rate. Interest is to apply from 20 July 2006 which is the latest date on which the respondent agreed to begin repayments.

[10] Accordingly the respondent is ordered to pay to the applicant the following amounts within 28 days of the date of this determination:

- (i) \$998.82, being the balance owed on his staff account as at 20 February 2006; and**
- (ii) \$32.88, being interest of 24 cents a day for the period from 20 July to 4 December 2006 (137 days); and**
- (iii) Further interest at the daily rate of 24 cents a day from 5 December 2006 until the amount owed is paid; and**
- (iv) \$70.00 to reimburse the applicant's filing fee in the Authority.**

Robin Arthur
Member of Employment Relations Authority