

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 389/08
5138298

BETWEEN SEUNGWHAN BAK
Applicant

AND WASAN INTERNATIONAL
CONSTRUCTION &
DEVELOPMENT LIMITED
Respondent

Member of Authority: Alastair Dumbleton

Representatives: Applicant in person
David Crompton, advocate for Respondent (29 October)

Investigation Meeting: 29 October and 12 November 2008

Determination: 12 November 2008

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Mr Seungwhan (Patrick) Bak has sought an order of compliance against Wasan International Construction & Development Limited, requiring that company to comply with the Authority's determination of 27 August 2008 given under AA 307/08.

[2] In that determination Wasan International Construction & Development Ltd was ordered to pay Mr Bak, as wages and holiday pay, a total of \$10,022.66 together with interest at the rate of 9% from 4 June 2008 until the amount has been fully paid. The company was also ordered to reimburse Mr Bak the \$70 fee paid by him to lodge his application in the Authority and commence the investigation of his claim.

[3] As recorded in the determination, the company had taken no steps by way of attending mediation, taking part in the preliminary telephone conference or lodging a statement in reply to the claims Mr Bak had brought against it. Although Mr Edward

Kang, a director of the company, attended the investigation meeting he merely sought to delay determination of the claim by making promises to provide further information, which he did not keep.

[4] Mr Kang has also sought to delay the resolution of this compliance application. His company did not lodge a statement in reply to the application, although Mr Richard Crompton, who is an employee of the company, did appear at the investigation meeting on 29 October. He said that the company was having difficulty in raising finance to pay Mr Bak but was hopeful arrangements could be made for that to happen at some time in the future. Mr Crompton said there was information that the company could supply to Mr Bak and the Authority to show its position.

[5] Mr Bak agreed to an adjournment of his application for two weeks to allow any such information to be given to him. That time has elapsed and no information has been supplied. There has been no appearance by the company at the resumed investigation meeting.

[6] This is a clear case of non-compliance with the determination given in favour of Mr Bak on 27 August 2008. There are no matters that should be taken into account weighing against the making of a compliance order as an exercise of discretion.

Determination

[7] Accordingly, pursuant to s 137 of the Employment Relations Act 2000, the Authority orders Wasan International Construction & Development Ltd to pay to Mr Bak wages and holiday pay of \$10,022.66 in total together with interest on that sum at the rate of 9% from 4 June 2008 until full payment has been made. Further, the company is ordered to reimburse Mr Bak the \$70 for the fee paid to lodge his application.

[8] Pursuant to s 137(3) of the Act, Wasan International Construction & Development Ltd is required to obey this compliance order within 14 days, that is by 26 November 2008.

[9] If this compliance order is not obeyed within that time, Mr Bak may consider whether to further apply to the Authority, this time for an order against Mr Edward Kang as a director of the company and of its parent, Wasan International Company

Ltd. Following a line of authority, the Authority may have the power to order Mr Kang personally in his capacity as a director of the companies, to transfer funds from the parent Wasan company, which I am satisfied is still trading, to Wasan International Construction & Development Ltd. The money owed can then be paid to Mr Bak.

[10] Also, if the compliance order now given by the Authority is not obeyed, Mr Bak may under s 140 of the Act enforce it in the Employment Court, where the remedies may include a fine of up to \$40,000 and an order that the property of Wasan International Construction & Development Ltd be seized and sold to pay the amount owed to Mr Bak.

[11] Wasan International Construction & Development Ltd is also ordered to pay Mr Bak the \$70 cost of filing his application for this compliance order.

A Dumbleton
Member of the Employment Relations Authority