

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2013] NZERA Christchurch 33
5311081

BETWEEN BRIGHTWATER ENGINEERS
LIMITED
Applicant

A N D BRIAN ARROWSMITH
First Respondent

STUART ARROWSMITH
Second Respondent

ANDREW DOOCEY
Third Respondent

MICHAEL COLQUHOUN
Fourth Respondent

Member of Authority: Helen Doyle

Representatives: Phil Butler, Advocate for Applicant
Angela Sharma Counsel for Respondents

Date of Determination: 12 February 2013

DETERMINATION OF THE AUTHORITY

[1] Recently the bailiff attempted to execute the determination of the Employment Relations Authority dated 17 December 2012 ([2012] NZERA Christchurch 275) on behalf of the first and second respondents.

[2] In response to this Brightwater Engineers Limited paid the amount owed in full to the first and second respondent to the District Court by way of cheque and the money is held there. Part of the determination is the subject of an application before the Employment Court for an extension of time to file a statement of claim that challenges the amount of the awards of compensation in the determination.

[3] The Authority received late in the afternoon on Thursday 7 February 2013 an ex parte application on behalf of Brightwater Engineers Limited to stay orders pending the outcome of any challenge and an order for payment with respect to any orders not the subject of the draft statement of claim by instalment under s.123(2) of the Employment Relations Act 2000 by payment on the following dates; 1 March 2013, 29 March 2013 and 4 May 2013.

[4] The Authority determined that the application should properly be inter partes and it was served on Ms Sharma together with the accompanying documents.

[5] Subsequently the Authority has received an affidavit from Campbell Smith sworn on 11 February 2013 and has made orders in accordance with the confidential nature of that affidavit and the financial information contained therein.

[6] Ms Sharma has been fully occupied since being advised of the application in the Employment Court. She was only available for a very brief telephone conference with the Authority this morning. During the telephone conference she was concerned that she had had no opportunity to respond to the application because of her busy schedule.

[7] There were two outcomes from the telephone conference with the Authority. The Authority advised that it was on its own motion under s.178(2) of the Employment Relations Act 2000 to remove that part of the application by Brightwater Engineers Limited relating to a stay of the matter to the Employment Court as it was not satisfied that it had jurisdiction to deal with that application where there was no challenge but an application to extend time to file the statement of claim before the Employment Court.

[8] The second outcome was that Ms Sharma was to have an opportunity to respond by 4pm Wednesday, 13 February 2013 to the application that remains before the Authority with respect to payment of the orders that are not the subject to the application before the Employment Court by instalment under s.123(2) of the Employment Relations Act 2000 on 1 March, 29 March and 4 May 2013.

[9] Mr Butler is to have an opportunity to respond to Ms Sharma's submission by 4pm Thursday, 14 February 2013.

[10] The Authority will determine the part of the application that remains in this jurisdiction by the close of Friday, 15 February 2013. Pending that determination by the Authority, the money owing that has been paid into the District Court by Brightwater Engineers Limited and is not the subject of the application before the Employment Court, is to be kept there.

[11] I do note that the Authority is yet to receive submissions as to costs from either party although I understand that between them there has been an agreement to an extension for the period to lodge the same. Any costs on this application are reserved.

Helen Doyle
Member of the Employment Relations Authority