

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 22/08  
5041985

BETWEEN                      HAYDEN BURNS  
   Applicant  
  
AND                                AUTOGLAS-STIEGER  
   LIMITED  
   Respondent

Member of Authority:      Helen Doyle  
  
Representatives:              Robert Thompson, Advocate for Applicant  
   John O'Connell, Counsel for Respondent  
  
Investigation Meeting:      14 November 2007 at Christchurch  
  
Determination:                7 March 2008

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**DETERMINATION OF THE AUTHORITY**

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**Identity of the respondent**

[1]     The statement of problem was lodged with the Employment Relations Authority naming the respondent as Franz Stieger. Discussions took place between the parties following the investigation meeting. It was agreed that the respondent should be Autoglas-Stieger Limited as that was Mr Burns employer. I amend the name of the respondent accordingly. Mr Stieger is the sole director of Autoglas-Stieger Limited.

**The employment relationship problem**

[2]     The applicant, Hayden Burns, commenced his employment with Autoglas Stieger Limited on 2 December 2005. He was primarily employed to help another employee, Shane Herdman, in fitting windscreens at Avis/Budget car yards. Mr Burns was aged 18 years at the time he commenced his employment.

[3] The respondent, Autoglas Stieger Limited (Autoglas), is a duly incorporated company which has its registered office at Auckland and carries on the business of windscreen repairs.

[4] Mr Burns did not have a written employment agreement during his employment with Autoglas as is required under the Employment Relations Act 2000. He was initially paid \$13 per hour and worked 40 hours per week. In or about mid-January 2006, the wage and time records show Mr Burns' hours of work varied and, except on one occasion, he worked less than 40 hours per week from mid-January 2006 onwards.

[5] Mr Burns said he accepted the variation to his hours of work. His hourly rate increased from \$13 per hour to \$16 per hour in March 2006.

[6] Mr Burns had an accident in the Autoglas work van in or about late April or early May 2006. He scraped the side of another client vehicle with the work van and telephoned Mr Stieger immediately to advise him about the accident. Mr Stieger was understandably disappointed that there had been an accident.

[7] There is a dispute as to whether Mr Burns was told he was not allowed to drive the work van prior to the accident. Mr Burns does not accept that he was told he could not drive the van.

[8] Mr Burns was advised after the accident by Mr Stieger that Autoglas only had third party insurance and not full cover. I accept that there was no reason for Mr Burns to have known that there was no full cover for the van prior to the accident. A quote was obtained to repair the damage caused to the work van of \$900.

[9] Mr Burns was paid weekly. For each of the weeks ending 12 and 19 May 2006, \$100 was deducted from Mr Burns' wages for damage to the van. There is a dispute as to whether Mr Burns accepted or verbally authorised these deductions. He says that he did not. Mr Stieger and his wife, Alvina Stieger, who is the Christchurch branch manager of Autoglas, say that Mr Burns agreed orally to the deduction.

[10] On 19 May 2006, Mr Burns was given a written warning. It provided:

*1st Written warning for Hayden Burns from Autoglas Stieger  
Christchurch 19/05/06*

- 1) *Hayden Burns is not allowed to drive any of the companies' cars or vans because he does not hold the required licence. Reason being damage caused to our van and a customers car.*
- 2) *We have told Hayden in the past that his appearance is not tidy enough but without much success.*

*This is why we now give him a written warning to make sure his shoes, trousers and shirts look tidy and clean, are appropriate for our work environment (safety) and he showers regularly. We had customers commenting on this.*

*We will review this with him in two weeks time and will watch his conduct.*

*Franz and Alvina Stieger  
Autoglas Stieger*

[11] Mr Burns continued to work with Mr Herdman at Avis/Budget after he was handed his warning but he did not continue to drive the van.

[12] There is a dispute as to whether or not Mr Burns raised his concern with Mr Stieger about the deduction of money from his wages.

[13] On 30 May 2006, a discussion took place between Mr Stieger and Mr Burns. At the end of that discussion, Mr Burns took sick leave until 2 June 2006. Mr Burns said that he then decided that he could no longer continue to work. He wrote out a letter of resignation and left it at the premises of Autoglas. His letter of resignation provided:

*2 June 2006*

*Dear frans*

*I am writing this letter as resignation letter after our talk on tuesday the 30th of May I fell that I have no alternative other to resign due to ur comments.*

*After u told me to find another Job I wasnt very happy the way u approachd me by saying if I leave now u wont take anymore money out for the van but if I stayd you would keep deducting money and the wages ive been left with is'nt enough to live on eg bills food ect Im also disapointd u didnt tell me u where taking money out and Just done it without telling me. I haven't been able to come back since our talk on the 30th may I will not return to work plzs pay me all my holiday pay without deductions*

*Hayden Burns*

[14] Mr Burns says that his resignation was in the nature of an unjustified constructive dismissal. He says that his claim falls within what is the second and third categories of constructive dismissal case referred to by the Court of Appeal in *Auckland etc Shop Employees etc IUOW v. Woolworths (NZ) Ltd* [1985] 2 NZLR 372.

He says that Autoglas breached its duties to him by the unauthorised deduction of money from his wages, the advice by Mr Stieger on 30 May that he find another position and if he did the debt would be wiped and the variation of his position to a warehouse only role without consultation. Mr Burns also says that Autoglas followed a course of conduct with the deliberate and dominant purpose of coercing him to resign. He relies on the warning given on 19 May 2006 without any opportunity for response which he said changed his terms and conditions of work by preventing him driving, the deduction of money and then the advice that he should look for another position and that the debt would be waived. The categories, in any event referred to in the *Woolworths* decision, are not absolutely distinct in nature.

[15] Mr Burns says the deduction of money from his wages was an unjustified action which caused him disadvantage and he seeks \$5,000 compensation with respect to that matter.

[16] Mr Burns seeks \$10,000 compensation and lost wages in the sum of \$7,440 gross for the alleged unjustified constructive dismissal. Mr Burns also seeks penalties in terms of the failure by Autoglas to provide him with a written employment agreement and for breaches of the Wages Protection Act 1983 in that he was not paid his full wages and there was no written authorisation to make the deductions.

[17] Autoglas concedes that it breached the Wages Protection Act 1983 by making the deductions from Mr Burns' wages without written authorisation but does not concede anything further in that respect.

[18] Autoglas says that the claim for compensation in terms of the unjustified disadvantage and the alleged unjustified constructive dismissal overlap and that there was no breach of duty on the part of Autoglas that would give rise to a claim of unjustified constructive dismissal or a claim for an unjustified action that caused Mr Burns disadvantage. Autoglas says that Mr Burns resigned voluntarily.

[19] Autoglas says that if there are penalties imposed by the Authority in terms of its failure to provide an employment agreement and for breaches of the Wages Protection Act 1983 then they should be minimal in all the circumstances.

### **The issues**

[20] The issues for the Authority to determine are:

- Was Mr Burns' employment or a condition thereof affected to his disadvantage by the deduction of money from his wages;
- Was the deduction of money an unjustified action applying the test in s.103A of the Employment Relations Act 2000;
- If the Authority concludes that there is an unjustified action that caused Mr Burns' disadvantage, should the claim be treated as a distinct claim for the purposes of remedies and, if so, are there issues of contribution;
- Was there a breach of duty by Autoglas to Mr Burns and/or did Autoglas follow a course of conduct with a deliberate and dominant purpose of coercing Mr Burns to resign;
- If there was a breach of duty, then was it sufficiently serious to make it reasonably foreseeable by Autoglas that Mr Burns might resign in the circumstances;
- Was the breach of duty the actual reason for Mr Burns's resignation;
- What remedies is Mr Burns entitled to and are there any issues of contribution;
- Should a penalty be awarded under the Employment Relations Act 2000 for Autoglas' failure to provide Mr Burns with a written individual employment agreement;
- Should a penalty be awarded under s.13 of the Wages Protection Act 1983 for the deduction made from Mr Burns's wages without his written authorisation?

## **Analysis and conclusions**

### ***Deduction of money***

[21] There is a proper concession that the deduction of money for the damage to the van from Mr Burns's wages was not authorised in writing as required by the

Wages Protection Act 1983. Section 4 of that Act provides that otherwise an employee is entitled to receive full wages without deduction.

[22] Mr O'Connell submits that Mr Burns drove the van at the time of the accident in contravention of a specific restriction on him to do so. He said that this took Mr Burns beyond the scope of the protection of his employment relationship with Autoglas enabling it to contractually agree with Mr Burns, albeit verbally, to reimburse Autoglas for the damage done.

[23] Mr O'Connell submits that Mr Burns suffered no disadvantage by the deduction and that the deductions were not unjustified.

[24] I turn first to whether Mr Burns was allowed to drive the company van by himself.

[25] Mr Burns was employed on the understanding that he would need to obtain his restricted licence as part of his duties were to drive the company vehicle to various jobs. In that regard, there was a letter given to Mr Burns dated 3 February 2006. Mr Burns then obtained a restricted licence on or about 17 February 2006, having only held a learner licence prior to that date. Mr Burns did not accept that he could not drive the company van by himself and said that he did drive the van alone during his employment. There was no evidence to support that Mr Burns' restricted licence required him to drive in the company of another person during work hours.

[26] Mr and Mrs Stieger explained in their evidence that the company van is difficult to drive and that they had made it clear to Mr Burns that he was not to drive alone. I accept Mrs Stieger obtained some additional driving instruction for Mr Burns at or about the time he obtained his restricted licence. Mrs Stieger said that Mr Burns was still not competent in the driving of the van Mr Stieger said that there had been a complaint about Mr Burns' driving. Mr and Mrs Stieger said it were these concerns that led to them advising Mr Burns that Mr Herdman was to supervise him when he drove the van and that he was not to drive the van alone.

[27] When Mr Herdman gave his evidence he said that he was not told Mr Burns was not to drive the van alone.

[28] In order to resolve the conflict about the driving of the van I have considered the evidence given by the parties together with any relevant documentation.

[29] If Mr Burns had been advised prior to the accident that he was not to drive the van or, was not to drive the van alone, then I find it more likely that that would have been referred to in the written warning that Mr Burns was given on 19 May 2006.

[30] That warning explains that Mr Burns was not allowed to drive the van. The reason given in the warning is that Mr Burns did not hold the required licence and the damage he caused in the accident he had in the van. There was no mention in the warning that Mr Burns drove the van in circumstances where he had been previously told not to. There is no mention of any supervision that Mr Herdman was supposed to provide. I also note there is no reference to deductions from Mr Burns' wages for damage to the van.

[31] Mrs Stieger said that there was no mention of these matters in the warning because she felt she had conveyed them adequately to Mr Burns verbally. The second matter in the warning, though, which is unrelated to driving, refers to previous verbal discussions.

[32] I do not find on the balance of probabilities that it was made clear to Mr Burns that he could not drive the van alone before the accident. I do not find that he was unable to drive the van alone by virtue of the fact that he held a restricted licence as was set out in the warning.

[33] I now turn to whether Mr Burns verbally authorised the deduction of money for damage caused to the van. Mr Stieger said that he felt that Mr Burns accepted responsibility for the accident and the damage and agreed to pay for it. Mr Stieger said that he did not recall Mr Burns approaching him to raise the concern about the deductions from his wages before he received Mr Burns' resignation letter. Mrs Stieger said that she was present when Mr Burns agreed to pay for the damage to the van and said that when Mr Burns picked up his first pay slip from which money had been deducted, she asked him if \$100 was *okay for him and he said yes*.

[34] Mr Burns, on the other hand, whilst accepting that he was responsible for the accident, says that he did not know that he was to be responsible for paying for damage to the van. Mr Burns agreed that he told Mrs Stieger on one occasion that she could deduct \$10 from his wages for an advance for bus money. He said that he had no discussions with her about deductions from his wages for damage to the van. Mr Burns said that it was not until the second pay slip for the week ending 19 May

2006 that he noticed that \$100 was being deducted from his wages. Mr Burns' mother, Denise Williams, gave evidence that Mr Burns discussed the deduction with her. She told him to talk with his grandfather. Ms Williams said that her son did not like confrontation.

[35] Mr Burns said that he *plucked up courage* to ask Mr Stieger on or about 26 May 2006 about the deductions from his wages. He said that Mr Stieger explained to him that it was damage to the work van. Mr Burns said that he told Mr Stieger that he should have talked to him first because he did not know the money was coming out.

[36] I prefer, on the balance of probabilities, the evidence of Mr Burns that he was unaware deductions were to be made from his wages for damage to the van until he received his second pay slip. I prefer his evidence that he did not verbally agree to the deductions being made to the evidence of Mr and Mrs Stieger. Mr Burns evidence about the deductions is consistent with what he wrote in his letter of resignation dated 2 June 2006. That is that he did not know they were going to be made. I also think it unlikely that Mr Burns would have agreed to a deduction of almost a third of his gross earnings for the two weeks the deductions took place. During the two weeks deductions were made Mr Burns worked 21.28 hours and 21.83 hours respectively. He received under \$350 gross each of those weeks from which \$100.00 was then deducted.

[37] I think it is quite likely that when Mr Burns discovered deductions were being made he queried them with Mr Stieger, probably a few days before 30 May 2006. Mr Burns appeared to me as the sort of young person who would not feel comfortable challenging his employer's actions face to face. Consistently with this impression I find that he did not challenge Mr Stieger whether or not Autoglas could make the deductions but simply expressed disapproval that they were being made without his knowledge. I do not find that Mr Burns can be said to have verbally authorised or accepted the deductions in those circumstances.

#### ***Meeting of 30 May 2006***

[38] There was some agreement between Mr Burns and Mr Stieger as to what was said at the meeting on 30 May 2006. There was disagreement about the context of particular statements.

[39] Mr Stieger said that the manager of Avis/Budget told him on or about 30 May 2006 that Mr Burns was not allowed to continue to work on their vehicles. Mr Stieger said that he needed to talk to Mr Burns about that. Interestingly, Mr Burns could not recall any discussion about Avis/Budget not wanting him back to work on their vehicles during the meeting on 30 May 2006. I note in that regard that there is no reference to that in his letter of resignation.

[40] Mr Burns said that he was told by Mr Stieger to find another job and that if he continued to work for Autoglas deductions would continue to be made from his wages. If he left, however, he was advised that he would no longer be indebted to Autoglas. Mr Stieger said that he advised Mr Burns that he could continue on working in the workshop but if he was not happy with that then he could look for another job. He said that he did not want Mr Burns to think he could not look for another job while he still owed the company money so he advised him that if he found another job then the debt would be wiped.

[41] Mr Burns accepted that he was told that he was free to stay on if that was what he wanted. Mr Burns understood that if he stayed on he would be working in the factory and packing boxes but not much else. It was a change to the duties that Mr Burns had been employed to perform. Mr Burns said that he performed about 80% of his work at the Avis/Budget work site. Mr Burns put the changes proposed to his duties down to the accident with the van rather than, as Mr Stieger said, the refusal by Avis/Budget to have him back on its premises. I find Mr Burns was unclear as to the reason why his duties had changed.

[42] Mr Burns was told to think about what he wanted to do and to get back to Mr Stieger. The meeting ended on that basis. Mr Burns said that he played some golf that day and gave some thought to the situation. He then talked to his grandfather. Mr Burns then telephoned in sick. He did not accept Mrs Stieger's evidence that he telephoned her on 31 May 2006 saying that he had decided to continue working but was too unwell to come in. Mr Burns said that he only advised Mrs Stieger that he was too unwell to return to work for 31 May and 1 June 2006 and accordingly took sick leave for those days. I think it less likely that Mr Burns advised Ms Stieger that he wanted to continue working and I accept his evidence that he simply informed her he was unwell.

[43] Mr Burns said that he wrote his letter of resignation which he left with Mrs Stieger on 2 June 2006. He said that the reasons for his resignation were because he felt he was no longer wanted and that if he kept working deductions would continue to be made from his wages.

[44] Mr Burns said that he was embarrassed and humiliated after he handed in his letter of resignation and lost all confidence. He said that it took him until 20 October 2006 to find another position. Mr Burns' mother also gave evidence about how she found her son to be after 2 June 2006.

### **Determination**

[45] I find that Mr Burns resigned for the reasons set out in his letter of resignation which he elaborated on at the Authority investigation meeting. They were that if he continued to stay with Autoglas, money would continue to be deducted from his wages for damage to the van. If he left, then the debt would be wiped. Mr Burns also said that he did not feel wanted and was told to find another job.

[46] I find that the deduction of money from Mr Burns' wages for the damage to the van was unlawful and a breach of Autoglas' duty towards Mr Burns. Mr Burns was entitled to be paid his wages in full without deduction. Mr Burns was told on 30 May 2006 that the unlawful deductions would continue to be made unless he left his employment with Autoglas. It was not the deductions on their own that were the reason for Mr Burns resigning. It was the advice on 30 May 2006 that deductions would continue to be made if Mr Burns stayed at Autoglas but the debt would be wiped if he found another job. For a young part-time employee on low wages, the advice that a debt would be wiped would have been particularly influential in deciding whether or not to leave his employment. Mr Stieger in my view would have been well aware of this.

[47] It was a term of Mr Burns' employment that he was to assist Mr Herdman to fit windscreens. He had undertaken those duties from the time his employment commenced with Autoglas. I find that the change proposed to Mr Burns' duties from assisting to fit windscreens to, essentially warehouse duties, was a variation to that term of employment. Mr O'Connell says that such change was part of Autoglas' prerogative in terms of reorganisation. He submits that in light of Avis/Budget not wanting Mr Burns back on their site, Autoglas had no choice.

[48] I find in the absence of a proper process with consultation the unilateral variation proposed to Mr Burns duties was a breach of his employment agreement with Autoglas and a breach of the good faith obligations under the Employment Relations Act 2000. Mr Burns was not given an opportunity to understand the basis on which the changes were proposed and was not told in a manner which gave him an opportunity to properly comment on or explain any concerns that Avis/Budget may have had. If there were concerns, then they were not the subject of earlier warnings.

[49] I am satisfied that the breaches related to the deduction of money from Mr Burns' wages, the suggestion to look for another job and, if successful, his debt with Autoglas would be wiped and the unilateral variation of Mr Burns' job to a warehouse role were of sufficient seriousness to make it reasonably foreseeable to Autoglas that a young employee like Mr Burns would not be prepared to continue to work under the conditions that existed at the time he resigned on 2 June 2006.

[50] I find that Mr Burns was constructively dismissed from his employment with Autoglas and I do not find that the dismissal was justified.

[51] I find that the deduction of money from Mr Burns wages was unjustified. Mr Burns had a fundamental entitlement to be paid his wages in full. Autoglas' actions in terms of the deductions were not what a fair and reasonable employer would have done in the circumstances. The deduction disadvantaged Mr Burns because he was entitled to be paid his wages in full without deduction unless he gave written authorisation.

[52] Mr Burns has a personal grievance that he was unjustifiably constructively dismissed and he has a personal grievance that there was an unjustified action that caused him disadvantage with respect to the deduction of moneys. He is entitled to remedies.

[53] The events relating to the personal grievance of unjustified dismissal and unjustified action causing disadvantage overlap. I do not find this is an appropriate case to make distinct awards in respect of both grievances and shall therefore consider any compensation on a global basis.

## **Remedies**

### ***Contribution***

[54] Mr O'Connell submits that if I find that there was a personal grievance, then any remedies awarded to Mr Burns should be reduced by 100% because of his contribution. I am unclear as to how Mr Burns can be said to have contributed to the personal grievances. There is no evidence to suggest that Mr Burns' accident in the van was other than an accident. Mr Burns immediately advised Mr Stieger of the accident. I have not found that Mr Burns knew that Avis/Budget did not want him back and I do not find that he can have been said to have contributed on that basis. Any performance issues had not been put to him in a procedurally fair way and in the absence of a fair process in terms of those matters I do not find that Mr Burns contributed to the events that gave rise to his grievances.

[55] I do not find in the circumstances of this case that Mr Burns contributed toward the events that gave rise to his personal grievances.

### ***Lost wages***

[56] Mr Burns handed in his resignation on 2 June 2006. He did not obtain further employment until 20 October 2006. That is a period of 20 weeks.

[57] Mr Burns claims the sum of \$7,440 gross for lost wages. I am satisfied that Mr Burns attempted to look for other work very shortly after 2 June 2006 to mitigate his loss. Mr Burns said that he applied for his first job straight away and that he applied for anything that he felt he had the skills for. Mr Burns put the number of jobs that he applied for at about 10 positions.

[58] I accept that Mr Burns applied quickly for a new position. I have taken into account that he suffered a serious knock to his confidence after 30 May 2006 but I do not have any medical evidence to support that he was unable to apply for more positions. In those circumstances, I intend to limit reimbursement to a three month period. Mr Burns worked variable hours each week and in order to calculate the loss I have gone back to the week ending 10 March 2006 when Mr Burns was first paid \$16 per hour and averaged out the number of hours worked each week until the week ending 26 May 2006. The averaging out of hours worked over those 12 weeks comes

to 29.18 hours. 29.18 hours at \$16 per hour multiplied by 13 weeks equals \$6,069.44 gross.

[59] I order Autoglas-Stieger Limited to pay to Hayden Burns the sum of \$6,069.44 gross being reimbursement of lost wages under s.123(1)(b) of the Employment Relations Act 2000.

### ***Compensation***

[60] Mr Burns said that after his dismissal he stopped socialising because all his *mates had jobs and he did not*. He accepted that he continued to play golf including after the discussion on 30 May 2006. Mr Burns said that he felt his dismissal wrecked his self-esteem. Ms Williams described Mr Burns' confidence, self-worth and motivation as having been affected by the way he was treated. She said that she felt he was depressed but Mr Burns would not see a doctor. I accept that Mr Burns did not feel confident enough to even register for an unemployment benefit and had to rely on his Ms Williams to support him. It has clearly taken quite some time for Mr Burns' confidence to return.

[61] I find that the effect of the unjustified dismissal on Mr Burns was serious in terms of his humiliation, loss of interest in socialising and general lethargy. It also seemed that he placed blame on himself for the accident and that further impacted on his recovery. I have already found this is an appropriate case to make a global award for compensation. In the circumstances I am of the view that a suitable award would be \$8,000.

[62] I order Autoglas-Stieger Limited to pay to Hayden Burns the sum of \$8,000 without deduction being compensation under s.123(1)(c)(i) of the Employment Relations Act 2000.

### ***Penalties***

[63] Mr Burns was not supplied with a written employment agreement before he commenced his employment or indeed during his employment as required by s.63A of the Employment Relations Act 2000. Mr Burns did not ask for one. He explained it was his first full time job and he did not know about his entitlement to have one. Mr Burns did not have the benefit of an agreement to guide him when he had

problems with his employment with respect to deductions being made from his wages and the events of 30 May 2006.

[64] There was variation to Mr Burns' hours of work. I accept that he raised no issues about that. Mr Burns was unaware who employed him and that could have been clarified with a written employment agreement. I do take into account that Mr and Mrs Stieger were comparatively new to New Zealand and may not have been aware of the requirement to have a written employment agreement between the company and its employees. They should, however, have made a point of finding out when the company employed staff what was required in terms of employment relationships. I am of the view that a penalty should be imposed but I think it should be minimal in the circumstances and be paid to the Crown.

[65] I order Autoglas-Stieger Limited to pay to the Authority which will then pay into the Crown bank account the sum of \$300 for failing to provide Mr Burns with a copy of an intended written employment agreement under s.135 of the Employment Relations Act 2000.

[66] Deductions were made to Mr Burns' wages in breach of s.4 of the Wages Protection Act 1983 which provides that an employee shall, when any wages become payable to a worker, be paid in full. There was no written consent to the deductions by Mr Burns under s.5 of the Wages Protection Act 1983.

[67] Mr Burns has sought a penalty under s.13 of the Wages Protection Act 1983 for a breach of a provision of that Act. Section 13 provides that an employer is liable to a penalty under the Employment Relations Act 2000 in those circumstances.

[68] I find the unlawful deductions to be a serious matter. I do take into account that the deducted money has been refunded to Mr Burns. I was concerned though to hear Mr Herdman's evidence that he questioned Mr Stieger as to whether he could deduct the money for the damaged van from Mr Burns' wages at the time the deductions were first made. Mr Stieger could not recall if Mr Herdman made this statement or not. Regardless of that there was no attempt by Mr and Mrs Stieger to ascertain whether they could legally make the deductions from Mr Burns' wages. In the circumstances of this case, I find it appropriate to award a penalty for this breach.

[69] I have taken into account the deducted money was refunded reasonably promptly, that there was a proper concession about the breach of the provisions of the

Wages Protection Act 1983 and that the Stiegers may not have been familiar with New Zealand law. Had I not had these matters to take into account then the penalty I intend to award would have been considerably higher. Taking into account the awards that I have already made to Mr Burns I do not intend that the whole penalty be paid to Mr Burns. I am however of the view that he should be entitled on this occasion to half of the penalty awarded.

[70] The penalty for failing to pay Mr Burns' wages in full and making deductions from them for which there was no written authorisation by Mr Burns under s.135 of the Employment Relations Act 2000 will be \$500.00 in total.

[71] I order Autoglas-Stieger Limited to pay to Hayden Burns the sum of \$250.00 being half the penalty awarded.

[72] I order Autoglas Stieger Limited to pay to the Authority which will then pay into the Crown bank account the sum of \$250

### **Costs**

[73] I reserve the issue of costs. Mr Thompson has referred to the amount of costs sought by Mr Burns in his final submissions. If either party wishes to make any further submissions, then they are to be provided to the Authority by 28 March 2008 after which date the Authority will proceed to determine costs.

### **Summary of findings and orders made:**

- I have found that Mr Burns was disadvantaged by the unjustified deduction of money from his wages.
- I have found that Mr Burns was unjustifiably constructively dismissed.
- I have not found that Mr Burns contributed to the events that gave rise to the personal grievances.
- I have ordered Autoglas-Stieger Limited to pay to Hayden Burns the sum of \$6069.44 gross being reimbursement of lost wages for a three-month period under s 123(b) of the Employment Relations Act 2000.

- I have ordered Autoglas-Stieger Limited to pay to Mr Burns the sum of \$8000.00 without deduction being compensation for humiliation, loss of dignity and injury to feelings under s 123 (1)(c)(i) of the Employment Relations Act 2000.
- I have ordered that Autoglas-Stieger Limited pay a penalty to the Crown in the sum of \$300.00 for failing to providing a written employment agreement.
- I have ordered that Autoglas-Stieger Limited pay a penalty of \$500 for breaches of the Wages Protection Act 1983. Half of that penalty is to be paid to Hayden Burns in the sum of \$250.00 and half is to be paid to the Crown.
- I have reserved the issue of costs.

Helen Doyle  
Member of the Employment Relations Authority