



# New Zealand Employment Relations Authority Decisions

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## **Climo v RKM Smith Enterprises Limited (Auckland) [2018] NZERA 104; [2018] NZERA Auckland (29 March 2018)**

Last Updated: 9 April 2018

### **IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND**

[2018] NZERA Auckland 104  
3024491

BETWEEN MARTIN CLIMO Applicant

AND RKM SMITH ENTERPRISES LIMITED

Respondent

Member of Authority: Vicki Campbell

Representatives: Applicant in Person

No appearance for Respondent

Investigation Meeting: 28 March 2018

Determination: 29 March 2018

#### **DETERMINATION OF THE AUTHORITY**

- A. The claim for arrears of wages is withdrawn.**
- B. RKM Smith Enterprises Limited is ordered to pay to Mr Climo the sum of \$83.38 without deduction within 14 days of the date of this determination.**

#### **Employment relationship problem**

[1] Mr Climo worked for RKM Smith Enterprises Limited. In his statement of problem Mr Climo claimed he was owed arrears of wages amounting to \$133.11. This amount has now been paid and Mr Climo has withdrawn his claim for the arrears and has asked me to deal with his application for costs.

#### **Procedural history**

[2] Mr Climo's statement of problem dated 12 February 2018 was unable to be served on the registered address for service of RKM. However, it was served on a Hamilton address and signed for by "Smitabahen Patel" at 10.14 am on 19 February.

[3] On 9 March Mr Kishor Patel, a director and shareholder of RKM contacted the

Authority. Mr Patel confirmed the person who signed for the documents on 19

February was his wife. Mr Patel was reminded of the need for him to lodge a statement in reply by 12 March. He asked for a

second copy of the documents to be emailed to him which was done that same day to an email address supplied by Mr Patel. No statement in reply was received from RKM.

[4] In order to advance the matter, on 14 March I proposed to the parties that the matter progress to an investigation meeting and made directions accordingly. A Notice of Direction and Notice of Investigation Meeting to that effect was served on the parties via email on 15 March.

[5] On 20 March in an email from Mr Manish Patel the Authority was advised Mr Patel could not attend the investigation meeting as he was in India until 10 April. At this time RKM had not responded to the application by lodging a statement in reply within the requisite 14 days and had not sought leave to respond or reply to the application. In considering whether to adjourn the investigation meeting I requested Mr Patel provide me with evidence of his travel including a copy of his ticket showing the date the travel was booked and the departure and return dates.

[6] RKM did not take the opportunity to provide evidence of its inability to attend the investigation meeting. RKM did not attend nor was it represented at the investigation meeting. As provided in clause 12 of schedule 2 of the Act I have proceeded to act fully in the matter as if the respondent had attended.

### **Costs**

[7] The only issue left for determination is the costs to be awarded to Mr Climo. Mr Climo was put to the expense of lodging his application which required him to pay a filing fee of \$71.56. Mr Climo has provided evidence that he has incurred disbursements for postage of \$7.50 and telephone calls amounting to \$4.32. These are all costs Mr Climo would not have incurred if RKM had paid his wages when they were due.

[8] Mr Climo is entitled to be reimbursed his filing fee in this matter and the disbursements incurred by him. RKM Smith Enterprises Limited is ordered to pay to

Mr Climo the sum of \$83.38 without deduction within 14 days of the date of this determination.

### **Certificate of determination**

[9] Pursuant to Regulation 26 of the Employment Relations Authority Regulations

2000 Mr Climo is to be provided with a certificate of determination, sealed with the seal of the Authority recording that within 14 days of the date of this determination, RKM Smith Enterprises Limited is to pay is to pay Mr Climo costs and disbursements of \$83.38.

Vicki Campbell

Member of the Employment Relations Authority