

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2016] NZERA Wellington 95
5631725

BETWEEN NATALIE OLIVE CORNELIUS
Applicant

AND HPG PRIVATE LIMITED
Respondent

Member of Authority: M B Loftus

Representatives: Michael McAleer, Advocate for Applicant
No appearance for Respondents

Investigation Meeting: On the papers

Determination: 11 August 2016

DETERMINATION OF THE AUTHORITY

[1] This is an application for an order the respondent, HPG Private Limited (HPG), comply with orders contained in an earlier determination dated 26 May 2016.¹

[2] HPG's position is unknown as it has failed to participate in the Authority's process.

Background

[3] On 26 May 2016 I issued the determination referred to in [1] above. In it I concluded Ms Cornelius had a personal grievance in that she had been unjustifiably dismissed by HPG. I also found she had money improperly deducted from her wages.

[4] As a result I ordered HPG make the following payments to Ms Cornelius:

- a. \$3,278.00 (three thousand, two hundred and seventy eight dollars) gross as recompense for wages lost as a result of the dismissal; and

¹ *Cornelius v HPG Private Limited & Ors* [2016] NZERA Wellington 60

- b. A further \$4,000.00 (four thousand dollars) as compensation for humiliation, loss of dignity and injury to feelings pursuant to section 123(1)(c)(i) of the Act; and
- c. A further \$2,080.00 (two thousand and eighty dollars) being payment of wages improperly deducted; and
- d. A further \$2,500 (two thousand, five hundred dollars) as a contribution toward the costs Ms Cornelius incurred in pursuing her claim.

[5] I ordered payment be made no later than 4.00pm Thursday 16 June 2016.

[6] Ms Cornelius now asserts payment has not been made and seeks an order HPG comply with the orders made in the earlier determination. She has supported her application with appropriate affidavits.

Determination

[7] As already said there has been no input or reply from HPG in respect to this application. That is not a surprise given it continues a pattern commented on in the substantive decision.²

[8] That said there was one interaction with HPG in that one of its officers, Kamaljit Singh (who was also second respondent in the original claim), participated in a telephone conference on 27 February 2016. During the call he advised an address to be used for service in respect to HPG and two others cited in original proceeding.

[9] There has been no advice that address has changed and this statement of problem was sent to it. Receipt was acknowledged by Mr Singh's signature so I can be confident HPG is aware of this proceeding though subsequent attempts to make telephone contact were unsuccessful. Given that and HPG's earlier approach I decided to conduct this investigation on the papers and set a timetable for input.

[10] Notice of my decision this would be determined on the papers was returned with a note neither Mr Singh nor HPG are now known by the occupants of the advised address.

² n 1 at [4] to [9]

[11] That raises the question of whether or not I proceed. The answer is yes. HPG has advised an address it wishes used for service. If that address has subsequently changed there is a duty on HPG to advise accordingly.³ HPG has not so done so. Accordingly I am satisfied suitable measures have been taken and observe HPG cannot avoid its obligations by simply disappearing.

[12] HPG has not availed itself of the opportunity to respond to the claim by filing a statement in reply. Given the affidavits supporting the claim and no contrary assertions I conclude the money's have not been paid and there is no known reason for that. The orders sought shall therefore be made.

Conclusion and orders

[13] I therefore order the respondent, HPG Private Limited, comply with those made in *Cornelius v HPG Private Limited & Ors* [2016] NZERA Wellington 60 and pay Natalie Cornelius the sum of \$11,858.00 (eleven thousand, eight hundred and fifty eight dollars).

[14] Payment is to be made no later than 4.00pm Thursday 25 August 2016.

[15] In closing I caution HPG and its director, Kamaljit Singh, that failure to comply with the above orders may result in further consequences. Should such a failure be pursued in the Employment Court⁴ potential consequences include the imposition of fines, the sequestration of property and/or imprisonment. Conversely, and perhaps more effectively, a certificate of determination may be sourced from the Authority and the matter pursued in the District Court.⁵

Costs

[16] In addition to the above order Ms Cornelius seeks full reimbursement of the cost of making this application. Unfortunately the amount claimed is inconsistent with the explanation as to how it was accrued.

[17] I accept an award should be made as Ms Cornelius should not have had to make this application but ascertaining an amount is difficult in the circumstances.

³ Regulation 15(3) of the Employment Relations Authority Regulations 2000

⁴ Sections 139 and 140 of the Employment Relations Act 2000

⁵ *Denyer v Peter Reynolds Mechanical Ltd t/a The Italian Job Service Centre* [2015] NZEmpC41 at [42] and *Broeks v Ross EmpC* Auckland AC36A/09, 11 November 2009 at [5]

Having considered Mr McAleer's hourly rate (which is reasonable) and estimated the time required for the application I consider \$500.00 (including reimbursement of the filing fee) to be reasonable.

[18] HPG Private Limited is therefore ordered to pay, in addition to the amounts specified in paragraph [13] above, a further \$500.00 (five hundred dollars) to Natalie Cornelius as a contribution toward the cost of making this application. This payment is also to be made no later than 4.00pm Thursday 25 August 2016.

M B Loftus
Member of the Employment Relations Authority