

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 50/10  
File Number: 5293210

BETWEEN                      Wayne Cottle  
   Applicant

AND                              Maintenance Manawatu Limited  
   Respondent

Member of Authority:      Denis Asher

Representatives:            Jenny Murphy for Mr Cottle  
   Astley Paddison for the Company

Investigation Meeting      On the papers by agreement of the parties

Submissions Received      By 8 March 2010

Determination:              19 March 2010

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**DETERMINATION OF THE AUTHORITY**

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**The Problem**

[1]      Mr Cottle seeks compliance with my determination dated 7 September 2009  
            (WA 128/09).

- [2] The Company effectively disputes those findings (statement in reply received on 13 May).
- [3] In a telephone conference on 15 February 2010 the parties agreed to the Authority determining this problem on the papers and a timetable for filing evidence and argument.

### **Background**

- [4] In my substantive determination, while dismissing Mr Cottle's allegation of unjustified dismissal, I recorded – at par 6 – that “... *the parties agreed in respect of Mr Cottle's unpaid wages claim that, if it had not already done so, the Company would pay the applicant for 18, 19 20 February 2009 ... plus holiday pay on those days where owing*”.
- [5] I therefore found that, to that extent, Mr Cottle succeeded with his claim.
- [6] I noted that the investigation took half a day and, subject to submission, there appeared no reason why costs should not follow the event. I also recorded that, as advised during the investigation, costs awards by the Authority for half day investigations typically do not exceed \$1,500.

### **Applicant's Position Summarised**

- [7] In a submissions on Mr Cottle's behalf received on 22 February 2010, reliance is placed on par 6 of the Authority's substantive determination (WA 128/09), namely that the parties agreed in respect of Mr Cottle's unpaid wages claim, and that, if it had not already done so, the Company would pay Mr Cottle for 18, 19, and 20 February 2009 and – subject to any sick leave entitlement – also 24 & 25 February plus holiday pay on those days where owing.
- [8] The parties agree Mr Cottle received wages for 18 & 19 February.

- [9] An email from Mr Paddison, the Company's director, in an email to the Authority dated 2 November 2009, confirmed that no wages were paid to Mr Cottle for 20 February 2009. The sum of \$148.50 nett is therefore sought.
- [10] The parties could not come to any agreement regarding the amount of sick leave that Mr Cottle was entitled to for 24 & 25 February.
- [11] A labour inspector concluded on 7 December 2009 that Mr Cottle was entitled to one day's sick leave and holiday pay for 24 February (see DoL letter dated 22 December 2009), i.e. \$172.80. That sum was paid to the DoL (and thereby, I understand, to Mr Cottle).
- [12] The Company is in breach of the agreement reached by the parties and recorded by the Authority at its investigation on 1 September 2009 in that it has not paid wages for 20 February, and it is also in breach of the Authority's determination in that it has not paid costs.
- [13] Further costs are sought in respect of this application, plus interest as the current 90-day bill rate plus 2% on any amount awarded by the Authority.

### **The Company's Position Summarised**

- [14] The Company says, amongst other things, that:
- a. Mr Cottle abandoned his employment and failed to work out his notice period: therefore, repayment of all monies paid to him during his un-worked notice period is sought. This matter was not scrutinised in the previous investigation meeting and the Company wants the matter revisited at another investigation meeting. An order is sought that Mr Cottle repay all monies paid to him relating to his un-worked notice period;
  - b. The Company paid Mr Cottle everything claimed in his time sheet for the week ending 21 February 2009 plus holiday pay on those amounts. This

matter was not the subject of the previous investigation meeting and the respondent is willing to go through the detail and provide documentation;

- c. In respect of the week ending 8 July 2008 Mr Cottle was paid one day sick pay for when he hurt his finger. The next week (ending 14 July) he was paid one week at 80% following which he went on ACC. A labour inspector advised, because no signed agreement existed between the parties in respect of this matter, the Company still owed Mr Cottle one day sick pay plus holiday pay on that amount: the monies were paid to the Department of Labour. This left the Company with an overpayment to Mr Cottle of one day plus holiday pay. The Company seeks an order from the Authority to have this amount repaid to it; and
- d. Costs are sought.

### **Discussion and Findings**

[15] By email forwarded by a support staff dated 5 November 2009 I advised the parties the Authority was now *functus officio* in respect of Mr Cottle's substantive claim, i.e. it had discharged its duty in respect of this matter by issuing determination WA 128/09. I also reiterated to the parties that, per the agreement recorded at par 6 of the determination, leave was reserved to them if agreement was not forthcoming on the wages owed Mr Cottle.

[16] Having regard to the above, I am satisfied that, in the context of determining a compliance application, the option is not available to the Company to now effectively relitigate its position in respect of Mr Cottle's original claims or – without filing its own, separate claims or filing an application for the investigation to be reopened – to raise new claims against him, but that the only matters to be determined in this determination are whether, having entered into an agreement to pay Mr Cottle for 20 February, the respondent has complied with that undertaking, and what costs should be awarded.

- [17] In respect of the agreement to pay, the evidence is clear it has not. Compliance with that undertaking, and the parties' agreement as recorded in the substantive determination WA 128/09 must follow.
- [18] As for the Company's claims in respect of Mr Cottle in the context of the previous, substantive investigation, if those matters were not satisfactorily dealt with from the respondent's perspective then it behoved the Company to challenge that determination.
- [19] As for any new claims the Company may have in respect of Mr Cottle, it is free of course – subject to any time constraints – to file separate proceedings against him.

### **Determination**

- [20] No later than 28-days from the date of this determination, the Company is to comply with the remedies set out in the original determination, i.e. by 16 April 2010. Specifically, within that period, the Company is to pay Mr Cottle:
- a. His wages for 20 February, i.e. \$148.50 nett (one hundred and forty-eight dollars and fifty cents); and
  - b. Costs of \$1,500.00 (one thousand and five hundred dollars).
- [21] Because Mr Cottle has not enjoyed the benefit of his original success, I am satisfied it is appropriate to award interest of 5%, based on the 90-day bill rate, and that the interest is to apply from the date of my substantive determination, i.e. 7 September 2009.
- [22] Because Mr Cottle has been successful in this matter, I set aside the suggestion of a calderbank offer set out at par 10 of his advocate's costs submissions dated 18 February 2010.

[23] However, I am satisfied it is appropriate to award further costs in respect of this compliance application and these I set at \$500 (five hundred dollars).

**Denis Asher**

**Member of the Employment Relations Authority**