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Culhane & Yap v Planz College Limited (Auckland) [2007] NZERA 123 (23 April 2007)

Determination Number: AA 117/07 File Number: 5074895

Under the [Employment Relations Act 2000](#)

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND OFFICE

BETWEEN Alan Culhane and Miranda Yap (Applicant)

AND Planz College Limited (Respondent)

REPRESENTATIVES In person, for Applicant

Shahin Kermani, executor of the estate of Behrooz Kermani

MEMBER OF AUTHORITY Marija Urlich

INVESTIGATION MEETING 7 March 2007

FURTHER INFORMATION 19 March 2007

RECEIVED

DATE OF DETERMINATION 23 April 2007

DETERMINATION OF THE AUTHORITY

[1] The applicants were made redundant from their positions with Planz College effective 15 December 2006 having received notice of such on 4 December 2006. The applicants seek orders for wages arrears and holiday pay they say is due and owing from their former employer Planz College Limited.

[2] The applicants filed their application with the Authority on 18 December 2006. A statement in reply was filed on behalf of the respondent on 8 January 2007. The statement in reply does not dispute the applicants' claim that they are owed wages and holiday pay and describes a failed attempt to sell Planz College in 2006 as having some bearing on the respondent's ability to pay the applicants what is owed.

[3] The parties attended mediation by 22 January 2007 as directed by the Authority.

[4] An investigation meeting was held on 7 March 2007. The applicants detailed their claims as follows:

Alan Culhane

outstanding wages (27 November - 15 December 2006)

\$1540.00 (gross)

\$1209.10 (nett)

Holiday pay \$2307.69 (gross) \$1812.36 (nett)

Miranda Yap

outstanding wages (27 November - 15 December 2006)

\$1300.00 (gross)

\$1032.03 (nett)

Holiday pay \$1730.76 (gross) \$1378.32 (nett)

The applicants' claims were supported by timesheets and the wage and time records.

[5] Mrs Kermani attended the investigation on behalf of the respondent. I understood that Mrs Kermani was present as the executor of the estate of her deceased husband, Behrooz Kermani, who at that time was listed on the companies register as the sole registered shareholder of the respondent company. Mrs Kermani told me at the investigation meeting that she was not in contact with the listed director Leehyi Kim.

[6] On 7 March I wrote to the parties expressing my concern that it appeared the sole director of the respondent company, Leehyi Kim, was not aware of these proceedings. I directed that she be served with that minute, copies of the statement of problem and statement in reply and an investigation meeting notice for 30 March 2007.

[7] Following service of this minute and attachments Mrs Kim filed documents in the Authority showing that Mrs Kermani was appointed a director of the respondent company on 6 October 2006 and that Mrs Kim was removed as a director of the respondent company on 7 November 2006.

[8] I wrote another minute to the parties dated 22 March 2007 providing this further information and summarising the position as I now understood it to be, the relevant sections of which are:

"[4] As it stands, it appears Mrs Kermani is the sole director of Planz College Limited.

[5] I understand from the statement of reply, filed on behalf of the respondent company by Mrs Kermani, that:

- (i) the respondent does not dispute the applicants' claim for lost wages;
- (ii) the respondent accepts it employed the applicants for the period of claim;
- (iii) the respondent accepts liability for the unpaid wages; and
- (iv) Mrs Kermani does not accept that she is personally liable for the payment of those wages.

[5] If this understanding is **incorrect** then the respondent should file and serve a statement of its position by **Thursday, 29 March 2007**.

[6] The investigation meeting scheduled for 30 March 2007 is vacated as is the timetable for filing witness statements."

[9] No written response was filed on behalf of the respondent company. I am satisfied that the position is as it is set out in my minute of 22 March 2007 and that Mrs Kermani, as the sole director of the respondent company, is its representative in respect of the matters before the Authority.

Determination

[10] I am satisfied that the respondent company has been fairly notified of Mr Culhane and Ms Yap's claims, of the investigation meetings scheduled to investigate those claims and has had a fair opportunity to provide a response.

[11] The sums of wages and holiday pay, set out in paragraph [4] above, are due and owing to Mr Culhane and Ms Yap by Planz College Limited. Planz College Limited is ordered to pay Mr Culhane and Ms Yap those sums forthwith.

[12] Planz College Limited is ordered to reimburse the \$70 filing fee incurred by the applicants in lodging their claim with the Authority. I understand there is no other issue as to costs.

Marija Urlich

Member, Employment Relations Authority