



Employment Court of New Zealand

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Denyer v Les Griffin Limited AC 43/08 [2008] NZEmpC 97 (13 October 2008)

Last Updated: 23 October 2008

IN THE EMPLOYMENT COURT

AUCKLANDAC 43/08ARC 68/08

IN THE MATTER OF a compliance order to a determination of the Employment Relations Authority

BETWEEN JAMES ARTHUR DENYER

Plaintiff

AND LES GRIFFEN LIMITED

Defendant

Hearing: 13 October 2008

(Heard at Auckland)

Appearances: Sarah Blick, counsel for plaintiff

No appearance for defendant

Judgment: 13 October 2008

ORAL JUDGMENT OF JUDGE B S TRAVIS

[1] James Denyer, a Labour Inspector, has applied for orders under [s140\(6\)](#) of the [Employment Relations Act 2000](#), in circumstances where the defendant has allegedly not complied with compliance orders made by the Employment Relations Authority.

[2] The plaintiff seeks orders that the defendant be fined a sum not exceeding \$40,000 as the Court deems fit, that the property of the defendant be sequestered and the defendant pay the plaintiff's costs of this application or other costs as may be appropriate.

[3] Mr Denyer gave evidence of the circumstances under which the compliance orders were made in the Employment Relations Authority. On 2 July 2007 he filed a statement of problem with the Authority in Auckland seeking the recovery of annual holiday pay, alternative holiday pay and sick leave pay in respect of Rosemary Davison, a former employee of the defendant. He received in due course a notice of investigation meeting, which was set down for 28 November 2007. He duly attended the investigation meeting, seeking the recovery of the outstanding holiday and sick leave pay. There was no appearance for the defendant. The Authority Member proceeded to hear and determine the matter in the absence of the defendant and on 29 November 2007, issued a determination ordering the defendant to pay to the Labour Inspector the following sums: \$121.50 gross as arrears of annual holiday pay owing; \$225.00 gross as sick pay owing to the worker; \$562.50 gross for alternative days pay

owing to the worker; and \$70 in reimbursement of the Labour Inspector's filing fee.

[4] Mr Denyer did not receive any monies from the defendant pursuant to that determination. He wrote to the defendant on 4 February 2008 advising that if the total monies owing were not remitted he would begin proceedings to seek compliance with the determination of the Authority. He did not receive any monies from the defendant and on 18 February 2008 filed a statement of problem with the Authority seeking a compliance order under [s137](#) of the [Employment Relations Act 2000](#) in relation to the determination of 29 November 2007. In due course, he received a notice of an investigation meeting set down for 1 April 2008. He attended that investigation meeting, but again there was no appearance on behalf of the defendant. The Authority proceeded to hear and determine the matter in the absence of the defendant and on that day issued a determination, ordering the defendant to comply with the orders made in its determination of 29 November 2007 by 30 April 2008. A copy of the determination has been provided to the Court and I am satisfied that it complies with the statutory obligations placed on the Authority when issuing such compliance orders. The Authority also ordered the defendant pay a further \$70 in reimbursement of the lodgement fee relating to the compliance order application. The Authority ordered the Labour Inspectorate to immediately serve a copy of the determination dated 1 April 2008 by leaving a copy of the determination at the registered office of the defendant.

[5] The plaintiff has filed an affidavit of Lynn Booker, a Labour Inspector, who has deposed that she served a copy of the determination at the registered office of the defendant on 2 April 2008.

[6] As at 14 May 2008, Mr Denyer had not received any monies from the defendant and therefore wrote again through counsel requesting the defendant to pay the monies and outlining the consequences of non-payment under [s140\(6\)](#) of the Act. On 27 June 2008 counsel for the plaintiff made a further written request of the defendant for payment of the monies ordered. In these circumstances Mr Denyer was left with little choice but to apply to the Court for the appropriate orders.

[7] On Wednesday 3 September 2008 Ms Booker has deposed that she served the defendant with the statement of claim in respect of an application for the exercise of the Court's power, by handing the document personally to Leslie Griffen at 18 Katherine Street, Henderson, Auckland. A search of the New Zealand Companies Office shows that to be both the registered office and the address for service of the defendant and Leslie John Griffen the sole director and shareholder. Mr Griffen acknowledged his identity and accepted the document. At the same time and place she also served the defendant with a notice of hearing issued by the Employment Court by again handing the document personally to Mr Griffen. At the same time she also served the defendant with a minute issued by Chief Judge Colgan, dated 2 September 2008 by again handing the document to Mr Griffen. The latter document urged the defendant to take legal advice about its position in the circumstances.

[8] At the hearing today, I caused the Registrar to call the name of the defendant but there has been no appearance on behalf of the company. I am satisfied from the evidence I have heard that this is a proper case for the making of appropriate orders under [s140\(6\)](#). The only matter preventing me from issuing a sequestration order today is that the Department properly will require some time to arrange for a sequestrator and to ascertain the likely costs of the sequestration. I am also satisfied from the evidence from Mr Denyer that the defendant appears to be in a position to pay the modest amounts that are outstanding as to date, which I find total \$1,049 including the filing fees. The defendant operates a Guthrie Bowron franchise paint store which is open to the public and seems to be trading.

[9] As at today, Mr Denyer has confirmed that no monies have been received and has provided a company search of the defendant which appears to indicate that it is still trading and filing annual returns, the last having been filed on 10 October 2008.

[10] In these circumstances, there being a modest amount owing to date, without the sequestrator's costs, I am also satisfied that the chances of recovery by sequestration seem reasonable.

[11] The evidence also satisfies me beyond reasonable doubt, that this is an appropriate case for the imposition of a penalty. Because I am going to adjourn the matter to allow the Department of Labour to obtain the services of a sequestrator, and to give the defendant one last chance to meet its obligations, I will not impose a fine at this point of time, as I am awaiting further submissions as to its level. However, the matters that have been put before me indicate that the defendant has totally ignored its obligations under the [Holidays Act 2003](#) and its requirements under the [Employment Relations Act](#) to properly respond when a statement of problem has been filed and an investigation meeting set up. In these circumstances a substantial fine is likely to be imposed and the only thing that would persuade me from staying my hand in that regard is if there is full payment in the meantime and the Department no longer pursues the penalty claim.

[12] The Department is also entitled to recover its filing fee and the costs of the proceedings today. The filing fee is \$300 and I award \$500 as a contribution towards the plaintiff's costs.

[13] I will adjourn the proceedings now until 2.30pm on Thursday, 13 November 2008. At that point in time if I am advised that there has been no payment in full I will impose the fine I have indicated and also order the sequestration of the defendant's property. This is the final opportunity for the defendant to meet its statutory obligations. The matter is adjourned accordingly.

Oral judgment delivered at 10.30am on Monday 13 October 2008

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