

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 322/09
5153628

BETWEEN JARED DODDS
 Applicant

AND HI-CALIBRE COMPOSITES
 LIMITED
 Respondent

Member of Authority: Robin Arthur

Representatives: Applicant in person by telephone
 No appearance for Respondent

Investigation Meeting: 7 September 2009 in Auckland

Determination: 7 September 2009

DETERMINATION OF THE AUTHORITY

[1] Jared Dodds' employment with Hi-Calibre Composites Limited (HCCL) ended with the redundancy of his position on 13 February 2009. At the time it was agreed in writing that he was owed \$7050.15 as his final pay.

[2] HCCL paid only some of that amount to him and Mr Dodds sought an order for recovery of \$2500 he said remained due and unpaid.

[3] By its statement in reply – in the form of a letter dated 11 March 2009 – HCCL confirmed “*an ethical and legal obligation to honour this debt*”. It had made 22 staff redundant since October 2008, retaining 14.

[4] By way of counterclaim HCCL also alleged Mr Dodds was in breach of non-solicitation and intellectual property clauses in his former employment agreement because he now worked for a former customer of HCCL.

The investigation

[5] Following an Authority telephone conference with Mr Dodds and HCCL director Craig Ross this matter was directed to mediation within 28 days. By agreement the mediation was to be held in Whangarei. By email on 14 August 2009 HCCL confirmed Mr Ross was “*happy to attend*” a mediation scheduled for 17 August 2009. On 17 August however a further email to the mediator advised that “[Mr Ross] is unable to attend the meeting this morning and the lady who was going to take his place has called in with the flu”.

[6] The Authority notified the parties of an investigation meeting to be held on 7 September 2009.

[7] Mr Dodds was given leave to attend the investigation meeting by telephone as he now lives in Kerikeri. HCCL, a Helensville-based company, was given leave for Mr Ross or any other suitably authorised representative to attend the investigation meeting in Auckland either by telephone or in person.

[8] The Authority file shows HCCL was notified of the investigation meeting by delivery of a notice, firstly to the email addresses of Mr Ross and another representative of HCCL, and, secondly by courier to its registered office and address for service as recorded with the Companies Office.

[9] No representative of HCCL attended in person on 7 September. An Authority support officer telephoned HCCL’s premises shortly after the notified time of 10am and was told Mr Ross was unavailable as he was “*on the floor*” but would be available shortly. A further opportunity to participate in the investigation was provided when the Authority support officer telephoned again around ten minutes later but was told Mr Ross was “*on a telephone call and could not be interrupted*”.

[10] Exercising the statutory power to proceed if a party (without good cause shown) fails to attend or be represented, I continued with the investigation meeting, taking affirmed evidence from Mr Dodds by telephone.¹

¹ Clause 12, Schedule 2 of the Employment Relations Act 2000.

The issues

[11] The matters for determination are:

- (i) what amount remains due to Mr Dodds; and
- (ii) whether further payments should be by instalments; and
- (iii) whether interest should be awarded; and
- (iv) whether Mr Dodds is disentitled to any amount remaining due to him from HCCL because he now works for a former customer of the company.

Determination

[12] On the basis of Mr Dodds' unchallenged evidence I find that HCCL owes Mr Dodds the sum of \$2500.

[13] Because no representative or witnesses for HCLL attended the notified investigation, either by telephone or in person, there is no evidence before me that would support the need for any payments of the sum due by further instalments.

[14] Mr Dodds seeks interest on the \$2500 remaining due. Under clause 11 of Schedule 2 of the Employment Relations Act 2000 (the Act) I think it fit to order the payment of interest on that sum for the period from 13 February to 7 September 2009. Interest is to be paid at 4.74 per cent for 206 days, being today's 90-bill rate plus two percent. The amount of interest due is \$66.88.

[15] Mr Dodds confirmed he now works for a former customer of HCCL however I do not find he is in breach of the terms of his former employment agreement with HCCL. I accept Mr Dodds' evidence that his present employer was encouraged to take him on by Mr Ross. HCLL did not raise any objection to this arrangement until Mr Dodds questioned its delay in paying him the outstanding final pay. Even if the limits on future employment were valid and enforceable restraints, I find HCLL waived any right to rely on the non-solicitation clause (which includes a prohibition on working for a former customer) when it sought employment for Mr Dodds with that customer.

[16] Mr Dodds is also entitled to reimbursement of his \$70 fee for lodging this claim.

Orders

[17] Within 28 days of the date of this determination, HCCL is to pay to Mr Dodds, the following sums:

- (i) \$2500, being the balance of the final pay agreed as owing to him; and
- (ii) \$66.88 as interest on that amount; and
- (iii) \$70.00 in reimbursement of his Authority lodgement fee.

[18] A certificate of determination is to be issued with this determination.

Robin Arthur
Member of the Employment Relations Authority