

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2017] NZERA Christchurch 171  
3007851

BETWEEN NATHAN GILLETTE  
Applicant

AND SUNPOWER LIMITED (now  
known as ROOFPOWER  
INSTALLATIONS LIMITED)  
First Respondent

THOMAS PATRICK GREEN  
Second Respondent

Member of Authority: Andrew Dallas

Representatives: Lee Stevens, Counsel for the Applicant  
Thomas Patrick Green, Director of the First Respondent

Investigation Meeting: 4 October 2017 at Nelson

Submissions: On the day

Determination: 6 October 2017

---

**DETERMINATION OF THE AUTHORITY**

---

- A. Sunpower Limited (now known as Roofpower Installations Limited) must comply with the Authority's determination of 4 January 2017 on or before 7 November 2017.**
- B. Nathan Gillette's application for authorisation under s142Y of the Employment Relations Act 2000 is adjourned.**
- C. Costs are reserved**

## **Employment relationship problem**

[1] In *Nathan Gillette v Sunpower Limited*<sup>1</sup>, the Authority made various findings and orders. Shortly thereafter, Sunpower's director, Thomas Patrick Green changed the name of the company to "Roofpower Installations Limited" (the company).

[2] The company was required to pay Mr Gillette the following amounts:

- (i) \$26,043.96 gross in unpaid wages;
- (ii) Interest on the sum of \$26,043.96 at 5% per annum payable from 28 July 2016 until the sum is paid in full;
- (iii) \$929.67 gross in unpaid holiday pay;
- (iv) \$740.06 as expenses reimbursement;
- (v) \$1200 gross as a bonus payment;
- (vi) \$15,000 as compensation for lost wages;
- (vii) \$7000 as compensation for hurt, humiliation and injury to feelings.

[3] In addition, the Authority imposed a penalty of \$10,000 on the company. This was to be paid to the Authority for subsequent payment into a Crown Bank Account.

[4] The company did not challenge the Authority's determination to the Employment Court.

[5] Initially, Mr Gillette did not seek to enforce the Authority's determination in the usual way. On 10 February 2017, he caused a Statutory Demand Notice to be issued under s 288 of the Companies Act 1993 and served on the company. This demand has gone unanswered.

[6] Mr Gillette then lodged a statement of problem on 13 April 2017 seeking authorisation under s142Y of the Act to enforce the Determination against Mr Green personally.

[7] The company lodged a statement in reply in which it opposed the granting of such an authorisation on grounds there was no breach of employment standards and no jurisdiction existed.

---

<sup>1</sup> [2017] NZERA Christchurch 1

[8] Mr Gillette subsequently lodged an Amended Statement of Problem seeking a limited compliance order for enforcement of parts of the orders of the Determination as they related to the period prior to s142Y of the Act coming into force.

### **The Authority's investigation**

[9] At the investigation meeting, I heard evidence from Mr Gillette and Mr Green. Mr Gillette's partner also provided an affidavit.

[10] During the meeting, Mr Gillette, through Counsel, sought leave to amend his application for a compliance order such that it was directed at the whole of the determination. As such leave was not opposed by the company, I granted the application.

[11] Having regard to s 174E of the Act, I do not refer in this determination to all the evidence received during the investigation meeting. While I have not explicitly referred to the submissions of the parties in this determination, I have fully considered them.

### **Compliance Order**

[12] It is appropriate to make a compliance order in the circumstance of this case. It is clear from the evidence the company has not complied with the Determination nor taken any reasonable or positive steps to comply.

[13] The company must comply with the Authority's determination of 4 January 2017 on or before 7 November 2017.

[14] Failure by the company to comply with this compliance order may result in Mr Gillette applying to the Employment Court to exercise its powers under s 140(6) of the Act. Remedies can include an order that the person in default be sentenced to imprisonment for a term not exceeding three months and/or a fine not exceeding \$40,000.

### **Application for Authorisation under s 142Y of the Act**

[15] Mr Gillette's application for an authorisation under s142Y of Act is adjourned.

[16] However, I am satisfied the jurisdiction exists and the legislative pre-requisites are most likely met for authorisation to be given to Mr Gillette to recover his unpaid wages, including minimum wages, and holiday pay from Mr Green personally.

[17] If the company does not comply with the Compliance Order contained in this Determination, and regardless of what other enforcement action he chooses to take, Mr Gillette is at liberty to apply within seven days to have this matter brought back on.

### **Costs**

[18] Costs are reserved.

Andrew Dallas  
Member of the Employment Relations Authority