

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA102/08
5126265

BETWEEN LISA GOUDIE
 Applicant

AND RAYMOND and VERONIQUE
 MOMMERS
 Respondents

Member of Authority: G J Wood

Representatives: Graeme Ogilvie for the Applicant
 No attendance by or for the Respondents

Investigation Meeting: 31 July 2008 at Wellington

Determination: 31 July 2008

ORAL DETERMINATION OF THE AUTHORITY

[1] This matter has had a troubled history. The applicant, Ms Lisa Goudie, filed an employment relationship problem claiming constructive dismissal on 14 November 2007. The statement of problem was sent to 26 Waterstone Avenue, Paraparaumu. The respondents, Mr Raymond and Mrs Veronique Mommers, sent a statement in reply, which was received on 5 December 2007.

[2] A directions conference was held on 29 January 2008 where further mediation was directed. Mr and Mrs Mommers were later represented by EMA Central. After that mediation, the parties concluded a mediated settlement under s.149 of the Act on 2 April 2008.

[3] Only \$300 in payments required under the record of settlement (specifically \$1,400 in terms of s.123(1)(c)(i) and \$167.67 gross in unpaid remuneration) has been paid. Mr and Mrs Mommers are no longer represented by EMA Central.

[4] The new statement of problem seeking compliance was sent out to Mr and Mrs Mommers on 5 June 2008 to their Paraparaumu address. I am informed by the support officer that New

Zealand Post could not deliver the statement of problem to that address, but left a calling card and that Mrs Mommers later called in to the New Zealand Post outlet to sign for and collect the statement of problem. No statement in reply was received.

[5] On 8 July 2008, an investigation meeting was set for 31 July 2008. Given the problems with delivery of the statement of problem and the fact that the Mommers main phone line was disconnected, personal service of the notice of the investigation meeting was required. A Ms Glenys Orupe has signed a letter before a Justice of the Peace that she served the notice of investigation meeting on Mrs Mommers, whom she knows, on 14 July. This was witnessed by Ms Goudie. I accept Ms Goudie's evidence on this point as I have questioned her directly, and she has confirmed all the details of service.

[6] Neither Mr nor Mrs Mommers attended the investigation meeting, nor were they represented at it. A support officer could not contact Mr or Mrs Mommers on any of three phone numbers allocated to them. I determined, pursuant to clause 12 of the Second Schedule of the Act, to act as fully as if Mr and Mrs Mommers had duly attended or been represented in this matter. I did so because I was satisfied that Mr and Mrs Mommers had been properly served with the notice of investigation meeting. Their absence is consistent with their failure to file a statement in reply.

[7] At the investigation meeting, I heard evidence from Ms Goudie, which I accept. This was to the effect that she has not been paid the balance of the sums owing. This failure is unexplained and must be held to be deliberate. It is therefore appropriate for a penalty of \$400 under s.149(4) of the Act (given the relatively low level of payments not made) to be awarded. As a matter of public policy, half of this penalty is to be paid to the Crown. However, as a direct result of non-payment, Ms Goudie got behind on her rent and had to get a loan, for which she had to meet additional costs of \$140.94. She has also had to meet significant travel costs. It is therefore appropriate that the other half of the penalty be paid to Ms Goudie.

[8] Mr Ogilvy has sought \$350 in costs, plus \$70 in expenses for this application. I accept that some preparation was required for the matter and that the costs and expenses incurred are reasonable.

[9] I therefore order the respondents, Mr Raymond and Mrs Veronique Mommers (on a joint and several liability basis) to pay the following sums by 14 August 2008:

- \$1,100 in terms of s.123(1)(c)(i) of the Act, to Ms Lisa Goudie;
- \$167.67 gross in unpaid remuneration, to Ms Lisa Goudie;

- \$350 in costs, to Ms Lisa Goudie;
- \$70 in expenses, to Ms Lisa Goudie; and
- \$400 as a penalty, \$200 to the Crown and \$200 to Ms Lisa Goudie.

G J Wood
Member of the Employment Relations Authority