

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 127/09
5163244

BETWEEN CHRISTIAN HALL
 Applicant

AND SPECIALIST TRADE
 SERVICES LIMITED Respondent

Member of Authority: Helen Doyle

Representatives: Christian Hall in person
 No appearance for Respondent

Investigation Meeting: 16 July 2009

Determination: 11 August 2009

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Christian Hall has applied to the Employment Relations Authority for an order that Specialist Trade Services Limited (Specialist Trade Services) comply with the terms of settlement entered into under s.149 of the Employment Relations Act 2000, and make a payment to him as agreed in clause 3 of the full compensatory sum of \$2,000 under s.123(1)(c)(i) of the Employment Relations Act 2000. Mr Hall says that he was paid the sum of \$2,000 as a net sum from which PAYE was deducted.

[2] The record of settlement was entered into on 3 April 2009 and signed by Mr Hall and advocate Robert Thompson as representative for Specialist Trade Services.

[3] On 5 April 2009, Mr Hall received a pay slip recording 80 ordinary hours paid together with final holiday pay and with tax and KiwiSaver amounts deducted.

[4] On 6 July 2009, the Authority held a directions conference with Mr Hall and Mr Thompson. A date was set by agreement for an investigation meeting on 16 July 2009.

[5] Mr Hall attended the investigation meeting on 16 July 2009 but there was no appearance on behalf of Specialist Trade Services. I am satisfied, however, that it knew about the meeting through its representative, Mr Thompson.

[6] After the investigation meeting, the Authority wrote to the Inland Revenue Department seeking confirmation of the amount that had been deducted from the \$2,000. That information is now available.

Determination

[7] The relevant part of the settlement agreement provides that:

The Respondent agrees to pay the Applicant a compensatory payment of \$2,000.00 pursuant to Section 123(c)(i) of the Employment Relations Act 2000 by way of direct credit within seven days of signing this agreement.

[8] When Mr Hall discovered that PAYE and KiwiSaver amounts were deducted from the sum of \$2,000 he gave evidence that he spoke to Aaron Knudson from Specialist Trade Services who agreed to pay an amount to bring the compensatory payment to \$2,000. Mr Hall said that such payment never eventuated.

[9] I am satisfied that Specialist Trade Services paid Mr Hall a sum that was less than the \$2000 it agreed to pay as a compensatory sum because from that amount there was \$370 deducted being \$350 PAYE and \$20 for KiwiSaver.

[10] A compensatory payment under s.123(1)(c)(i) of the Employment Relations Act 2000 is a tax free payment and should be paid in full without deduction.

[11] I am satisfied that Specialist Trade Services has failed to comply with clause 3 of the record of settlement and pay Mr Hall the sum of \$2,000 without deduction for a compensatory payment and that the non-compliance continues.

[12] It is appropriate in those circumstances that a compliance order be made.

[13] I order Specialist Trade Services Limited to pay to Christian Hall the sum of \$370 within seven days of the date of this determination.

Interest

[14] If the payment is made to Mr Hall in the sum of \$370 as set out above within seven days of the date of this determination, there will be no interest payable.

[15] After the expiration of the period of seven days from the date of this determination, if the moneys are not paid, Specialist Trade Services Limited is to pay interest under clause 11 of Schedule 2 of the Employment Relations Act 2000 until payment is made at the rate of 3.5% which rate does not exceed the 90 day bill rate plus 2% as at the date of this determination.

Costs

[16] Mr Hall is entitled to be reimbursed for his filing fee in this matter. I order Specialist Trade Services Limited to pay to Christian Hall the sum of \$70 being the filing fee for a statement of problem.

Failure to comply with a compliance order made under s.137 of the Employment Relations Act 2000

[17] Section 140(6) of the Employment Relations Act 2000 provides:

Where any person fails to comply with a compliance order made under section 139, or where the Court, on an application under section 138(6), is satisfied that any person has failed to comply with a compliance order made under section 137, the Court may do 1 or more of the following things:

- (a) if the person in default is a plaintiff, order that the proceedings be stayed or dismissed as to the whole or any part of the relief claimed by the plaintiff in the proceedings;*
- (b) if the person in default is a defendant, order the defendant's defence be struck out and that judgment be sealed accordingly;*
- (c) order that the person in default be sentenced to imprisonment for a term not exceeding three months;*
- (d) order that the person in default be fined a sum not exceeding \$40,000;*
- (e) order that the property of the person in default be sequestered.*

Summary of orders made

- Specialist Trade Services Limited is to comply with clause 3 of the record of settlement within seven days of the date of this determination and pay to Christian Hall the sum of \$370.

- If the payment of \$370 is made within seven days of the date of this determination there will be no interest payable but if the payment is not made within that time then interest will be payable until such a payment is made at the rate of 3.5%.
- Specialist Trade Services Limited is to pay Christian Hall the sum of \$70 being his filing fee.

Helen Doyle
Member of the Employment Relations Authority