

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 315/07
5095621

BETWEEN	HINE (KARLA) HORN Applicant
AND	TC PAINTING LIMITED First Respondent
AND	DIMENSIONAL PAINTING LIMITED Second Respondent

Member of Authority:	Vicki Campbell
Representatives:	Karla Horn in Person No appearance for Respondents
Investigation Meeting	8 October 2007 at Tauranga
Determination:	11 October 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This employment relationship problem concerns the recovery of unpaid wages. Ms Horn filed a statement of problem in the Employment Relations Authority on 2 August 2007.

[2] The initial statement of problem cited as the respondent, both TC Painting Ltd and Dimensional Painting Limited, as Ms Horn was not sure which company she worked for. Mr Chris Nye (whose actual name is Christopher Mallite), apparently operated through both companies.

[3] According to the Companies Register, the sole shareholder and Director for Dimensional Painting is Ms Esther Gudsteinsdottir, Mr Nye's girlfriend. However, at the investigation meeting Ms Horn acknowledged that TC Painting Ltd was her employer and withdrew her claims against Dimensional Painting Limited.

[4] In response to the statement of problem, on behalf of TC Painting Ltd, Mr Nye, the sole Director of TC Painting Ltd filed in the Authority, a cheque made out to Ms Horn in the sum of \$453.62, being the sum claimed. This cheque was forwarded to Ms Horn, however, it was not honoured.

[5] The Authority was notified that Mr Nye had moved from Tauranga to Taupo and that the address for service stipulated on the Companies Register was now being used by a new, unrelated, company. However, I am satisfied that the notice of investigation meeting was served on the address for service as listed in the Companies Register and that Mr Nye was aware that the investigation meeting was to take place on 8 October 2007.

[6] The investigation meeting commenced at 10.00am on 8 October 2007. The respondent did not make an appearance at that time. The notice setting down the investigation meeting sets out the consequences of non-attendance.

[7] Just prior to the commencement of the investigation meeting I had contacted Ms Debbie Marsh, Employment Relations Authority Support Officer, and asked her to try and make contact with the respondent on one of two telephone numbers provided to the Authority.

[8] Ms Marsh reports that she telephoned Mr Nye at 9.55am at which time he indicated that he had no intention of attending the proceedings as he had other business commitments. He advised Ms Marsh that he was intending to deposit \$150.00 into Ms Horn's bank account that day with a final amount to be deposited later in the week.

[9] I considered the advice from the respondent in terms of Clause 12 of Schedule 2 of the Employment Relations Act 2000 which empowers the Authority to proceed to act fully in a matter if a party fails to attend or be represented without good cause.

[10] I did not consider that the respondent had shown "good cause" for its failure to attend the investigation meeting. Accordingly, I proceeded to act as fully in the matter as if the respondent had attended.

[11] Ms Horn attended the investigation meeting and produced two text messages she had received from Mr Nye on the morning of the investigation meeting. Mr Nye confirmed his advice to Ms Marsh that he would be making two

payments to Ms Horn. I have since been advised that Ms Horn has received \$150.00 from Mr Nye.

[12] I am satisfied that the amount of \$453.62 was outstanding and was owed to Ms Horn at the time she filed her statement of problem. This conclusion is supported by the cheque Mr Nye sent to the Authority in August 2007 and also by the fact that Mr Nye has never disputed that the amount was owing.

[13] Since Ms Horn filed her statement of problem, however, she has received two separate amounts in part payment of the outstanding wages. On 27 August 2007 Mr Nye paid to Ms Horn an amount of \$100.00 and then, as already stated in this determination, he paid Ms Horn a second amount of \$150.00 on 8 October 2007. That leaves an outstanding amount of \$203.62.

TC Painting Ltd is ordered, pursuant to section 131 of the Employment Relations Act 2000, to pay to Ms Horn the sum of \$203.62 without deduction. This amount is to be paid within 14 days of the date of this determination.

Costs

[14] This application required a filing fee of \$70.00. It is appropriate that the respondent reimburse the fee.

TC Painting Ltd is ordered to pay to Ms Horn the sum of \$70.00 within 14 days of the date of this determination.

Vicki Campbell
Member of Employment Relations Authority