

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 220/09
5154529

BETWEEN HAKARAIA IHAKA
 HOROMIA
 Applicant

AND BIRCH LOGGING LIMITED
 Respondent

Member of Authority: Robin Arthur

Representatives: Applicant in person
 Sandra Murray for Respondent

Investigation Meeting: 6 July 2009 by telephone conference

Determination: 6 July 2009

DETERMINATION OF THE AUTHORITY

[1] Hakaraia Horomia seeks an order for recovery of wages and holiday pay not paid to him since his former employer Birch Logging Limited (BLL) ceased trading in March 2009.

[2] BLL accepts it owes Mr Horomia the sum of \$900.29 in wages, \$2188.97 in holiday pay and wages for another 34 hours work at \$19 an hour (that is an additional \$646 gross).

[3] By agreement an investigation meeting was held by telephone conference with affirmed evidence from Mr Horomia and BLL's directors Sandra Murray and Frank Birch.

[4] Ms Murray says BLL cannot pay the money due as the company has a bank overdraft of more than \$22,000 and has no assets. It operated as a contract logging

transport firm. Its trucks have been returned to the finance company through which they were leased. She says there is no point in ordering payment of the overdue wages by instalments as BLL has no means to meet such payments.

[5] Mr Birch confirmed that BLL accepted its debt to Mr Horomia but was not able to pay it. He said other creditors were pursuing BLL through a debt collecting agency.

[6] On the basis of that information I accept that an order for payment by instalments is not required as BLL could not meet those instalments. However BLL remains liable to Mr Horomia for the amount due to him. That debt would take its place in the statutory order of priorities in the event of liquidation of the company.

[7] It is also fit that Mr Horomia be awarded interest on the sum due for the period it remains unpaid – that is from October 9 2008 until the date of this determination and thereafter until it is paid: refer clause 11 of Schedule 2 of the Employment Relations Act 2000. The applicable rate is 4.80 per cent (being today's 90 day bill rate plus two per cent).

[8] Accordingly BLL is ordered to pay to Mr Horomia:

- (i) the sum of \$3735.26 for outstanding wages and holiday pay; and
- (ii) \$132.62 as interest on that sum for the period from 9 October to the date of this determination; and
- (iii) \$0.49 per day as interest on the wages and holiday pay due, from the day after this determination until the date it is paid in full; and
- (iv) \$70.00 in reimbursement of his fee for lodging his wage recovery application.

Robin Arthur
Member of the Employment Relations Authority