



Employment Court of New Zealand

You are here: [NZLII](#) >> [Databases](#) >> [Employment Court of New Zealand](#) >> [2010](#) >> [2010] NZEmpC 157

[Database Search](#) | [Name Search](#) | [Recent Decisions](#) | [Noteup](#) | [LawCite](#) | [Download](#) | [Help](#)

Ingham v August Models and Talent Limited [2010] NZEmpC 157 (6 December 2010)

Last Updated: 14 December 2010

IN THE EMPLOYMENT COURT AUCKLAND

[\[2010\] NZEMPC 157](#)

ARC 96/10

IN THE MATTER OF applications for penalty and sequestration orders

BETWEEN JOSAINE VERENA INGHAM (LABOUR INSPECTOR)

Plaintiff

AND AUGUST MODELS AND TALENT LIMITED

Defendant

Hearing: 6 December 2010 (Heard at Auckland)

Appearances: Sarah Blick, counsel for plaintiff

No appearance for defendant

Judgment: 6 December 2010

ORAL JUDGMENT OF CHIEF JUDGE GL COLGAN

[1] The questions for decision today are:

- whether the Court should order a penalty of up to \$40,000 against the defendant; and
- whether the plaintiff is entitled to an order for sequestration of the defendant's assets to satisfy monies owed to its former employee, Timothy Plant, to the plaintiff, and to the Crown as a result of these

proceedings.

INGHAM (LABOUR INSPECTOR) V AUGUST MODELS & TALENT LTD AK 6 December 2010

[2] The case began as long ago as September 2008 when Mr Plant worked for the defendant as an extra on the television programme "Shortland Street" but was not paid or was underpaid for his work. The plaintiff, a labour inspector, became involved in late May 2009. She ascertained that the minimum wage that Mr Plant should have been paid was deficient by \$258. The defendant also failed or refused to provide the inspector with wage and time records relating to Mr Plant's engagement by it.

[3] Through a series of proceedings brought by the inspector in the Employment Relations Authority, and which I will not detail because its determinations speak for themselves, August Models and Talent Limited now owes the inspector and the Crown much more significant amounts of money than the original underpaid wages. Although afforded proper opportunities to participate in those Authority investigations, the defendant has consistently failed or refused to do so. At one point it sent the inspector a cheque in payment of all of its liabilities to that time but when it was presented this cheque was dishonoured. The inspector has subsequently given the company ample opportunity to "know what is going on and to influence the outcome by participating in these processes". It has not done so. The latest episode in this saga is the defendant's failure or refusal to obey the Authority's compliance

order made on 23 April 2010.^[1]

[4] I am satisfied that this proceeding has been served properly on the company and that it has taken no step to oppose the inspector's applications. Its non-appearance this morning is at least consistent with its stance in the Authority and in these circumstances it was just to proceed in the absence of the defendant.

[5] The claim for a penalty relates to the non-compliance by the company with the compliance order made by the Authority on 23 April 2010. The terms of that order were that within 14 days the defendant was:

- to pay to the inspector (to the use of Timothy Plant) the sum of \$258 together with interest on that sum calculated at the rate of 4.8 per cent per annum from 10 December 2009 to the date of payment;
- to pay penalties totalling \$2,250 for failure to pay minimum wages and for failure to produce time and wage records; and
- to pay \$140 for Authority filing fees.

[6] The Authority's determination, which I am satisfied was served on the defendant, set out the consequences to it of breach of the Authority's compliance order.

[7] The maximum fine for breach of a s 137 compliance order, as the Authority's was, is a sum not exceeding \$40,000: s 140(6)(d) of the Employment Relations Act

2000 (the Act).

[8] Compliance orders should not be flouted, as I am satisfied has been the defendant's response to that which was made by the Authority, served on the defendant and otherwise brought to its attention. There is no suggestion that it is unable to pay its debts by reason of impecuniosity. Had that been so, the Court would have expected the defendant to have made contact with the inspector or the Authority or the Court to explain the position and to seek to make arrangements to honour its obligations. It has not done so. Prompt payment of the modest sum of

\$258 would have avoided such subsequent time and cost. I am not aware of any previous breaches by the defendant and so treat it as a first offender.

[9] Parliament has determined, by both setting the maximum fine at \$40,000 and allowing it to be combined with other sanctions in a suite of other measures, that refusals to comply with Authority orders are to be treated seriously. In these circumstances I consider that the appropriate fine is one-quarter of the maximum and the defendant is ordered to pay to the Crown a fine in the sum of \$10,000. The plaintiff is entitled to a contribution to the legal costs of prosecuting the matter in court and I direct that the defendant pay costs to the plaintiff of \$1,000.

[10] The inspector also seeks an order for sequestration of the defendant's assets under s 140(6)(e) of the Act. Sequestration is a complex process and a potentially costly one although ultimately the party whose property is sequestered may be liable for the costs of the sequestrator from the proceeds of the realisation of its assets. There is insufficient necessary information before me today to make an order for sequestration. Steps such as draft orders, the written consent of the proposed sequestrator, documents of indemnification for the sequestrator's costs, a proposed regime for reporting by the sequestrator and the like, need to be prepared by the plaintiff and put before the Court.

[11] I will adjourn the plaintiff's application for a sequestration order to 10 am on

Tuesday 1 February 2011 to enable the plaintiff to put that material before the Court.

[12] In the meantime, a copy of this judgment must be served on the defendant at its registered office no later than Monday 20 December 2010, that is 14 days from the date of this judgment. The defendant can even now avoid the consequences of a sequestration order by paying the monies due by it to the inspector including, but not limited to, the underpaid wages for Mr Plant, the reimbursement of the inspector's filing fees, the penalties ordered by both the Authority and this Court, and costs. I urge the defendant, even now, to meet its responsibilities in law if only to avoid the consequences of its refusal to do so to date becoming even more disproportionate to the original and important obligation of paying Mr Plant properly and of maintaining and producing wage and time records.

GL Colgan

Chief Judge

Judgment delivered orally at 10.29 am on Monday 6 December 2010

^[1] AA183/10.

