

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Gregory William Johnson trading as Quality Fixers 2002 (Initiating party)

**AND** Jordan Lee Minhinnick (Responding party)

**REPRESENTATIVES** Gregory Johnson in person  
Jordan Lee Minhinnick in person

**MEMBER OF AUTHORITY** Philip Cheyne

**INVESTIGATION MEETING** 31 October 2005

**DATE OF DETERMINATION** 1 November 2005

DETERMINATION OF THE AUTHORITY

*Introduction*

[1] By application dated 2 September 2005, Mr Gregory Johnson applies to reopen an investigation on the ground that he was never notified of the original investigation meeting date and therefore could not appear.

[2] During a brief investigation meeting, Mr Johnson supported his application by giving evidence on oath and responding to my questions. The original applicant, Mr Jordan Maehe (previously Jordan Minhinnick) was present but it was not necessary to hear any evidence from him.

*What happened?*

[3] Mr Johnson accepted that he had been served with the original statement of problem. Service was on 9 September 2003. Because no reply had been received from Mr Johnson, an Authority support officer rang on 13 October 2003 and left a message for him to call the Authority. Mr Johnson did not respond to that call. A date was fixed for an investigation meeting and the Authority directed that the notice of investigation meeting be personally served on Mr Johnson. A service agent made various attempts to do that but was unable to locate him. Mr Johnson did not attend the investigation meeting. The Authority decided to arrange a further investigation meeting and ordered notice of that meeting to be publicised in the public notices of the Christchurch Press. Mr Johnson did not attend that meeting or make any attempt to contact the Authority about the statement of problem or the earlier phone message. In those circumstances, the Authority issued a determination dated 15 December 2003 awarding the applicant arrears of wages and interest, imposing penalties for breaches of the Employment Relations Act 2000 and the Wages Protection Act 1983 and costs.

[4] Mr Johnson told me that he got the statement of problem and *next thing I got was the decision in the mail*. The determination was posted by the Authority to him at his Preston Road address on 15 December 2003. In January 2004, Mr Johnson contacted the Authority obviously in response to the decision and was given the form for an application for rehearing. He did nothing about that application until September 2005.

[5] Mr Johnson told me that he did not lodge a statement in reply because he did not see that part of the original statement of problem. The requirement to lodge a statement in reply is noted on the statement of problem and is also explained in the accompanying letter that was served on Mr Johnson. Mr Johnson's failure to act at that stage, his failure to respond to the message from the Authority support officer and his delay in applying for a rehearing all point to a case of *wilful blindness* at best on Mr Johnson's part.

### ***Reopening***

[6] The power to reopen an investigation is contained in clause 4 of the 2<sup>nd</sup> schedule to the Employment Relations Act 2000. There is a wide discretion but its exercise must be in accordance with the role of the Authority to comply with the principles of natural justice, promote good faith behaviour, support successful employment relationships and generally further the object of the Employment Relations Act 2000. Good faith behaviour is an important theme in the Act.

[7] Mr Johnson wants the Authority to reopen the investigation and hear his opposition to the original claims when he chose not to comply with his obligations from the outset and then received an adverse determination. What was required was a prompt application to reopen, not delay. The present application appears to have been prompted by attempts to enforce the original orders because Mr Johnson refers to that in his application. Given his wilful blindness and delay, it cannot be said that Mr Johnson has approached his obligations in good faith.

### ***Conclusion***

[8] If he had applied promptly to reopen the investigation, Mr Johnson may have been successful, but given the inordinate and unexplained delay since January 2004, the Authority declines to reopen the investigation.

[9] It appears that District Court enforcement processes are in train. But for that I would have considered making a compliance order under section 137 of the Employment Relations Act 2000 in conjunction with the present proceedings requiring Mr Johnson to comply with the original orders of the Authority. As the point was not discussed during yesterday's brief investigation meeting, I will reserve the issue for later consideration if necessary.

[10] Mr Maehe was not legally represented so costs may not be an issue but I will reserve that point as well just in case.

Philip Cheyne  
Member of Employment Relations Authority