IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE

CA 59A/10
5138286

	BETWEEN	THOMAS MATTHEW BRYDEN JOHNSTON Applicant
	AND	RICHARD LOWE and JOCELYN EDITH COLVILLE and KARAMEA QUARRY AND CONCRETE LIMITED and NORTH TERRACE DEVELOPMENTS LIMITED, Respondent

Member of Authority:	James Crichton
Representatives:	Applicant in person Respondents in person
Submissions received:	19 March 2010 from Applicant None from Respondents
Determination:	26 April 2010

SUPPLEMENTARY DETERMINATION OF THE AUTHORITY

Purpose

[1] By determination dated 12 March 2010, the Authority dealt with the substantive matter but declined to make orders in respect to compensation, reserving leave for the applicant to revert to the Authority in the event wages due and owing were not paid.

[2] Sadly that is the position and by Notice of Direction dated 24 March 2010, the Authority recorded that the applicant had advised there had been no payment of the significant sum owed in wages and no real prospect of that being paid in the short future.

[3] In that Notice of Direction the Authority timetabled receipt of submissions exclusively from the respondents, on the basis that those submissions had effectively

already been received from the applicant. Despite receiving email correspondence implying that the respondents' submissions are about to issue, no actual submissions have been received from the respondents and that being the position I am satisfied that it is appropriate for the Authority to deal with the matter now, the parties having had a proper opportunity to be heard.

Compensation

[4] Had this matter been addressed by the prompt payment of the large sum owed to the applicant in wages, I should have preferred to let consideration of compensation lie. However, on the applicant's view, the prospect of settlement of his significant wages claim is not immediately likely and given that a further delay in payment is in prospect, it seems appropriate to consider compensation afresh.

[5] The applicant Mr Johnston was, the Authority found, employed by all of the respondent entities at various times in a period of continuous employment from September 2008 down to 19 December 2009. During that time, Mr Johnston was paid some $23,000 net in wages but is still owed around $34,500 net in outstanding wages, together with holiday pay and reimbursement of Transport Act fines met by Mr Johnston on behalf of the employers.

[6] The respondents do not deny wages and other monies are owed, and even broadly agree on the quantum but claim they are precluded from paying by the failure of their clients to pay them.

[7] By reason of the Authority's acceptance of this reasoning, at the investigation meeting, the resolution proposed and agreed was that the parties would mutually contact the respondents' clients and seek payment of the outstanding sums which would be promptly paid over to Mr Johnston as wages.

[8] However, it is because it seems that the third parties identified are not indebted to the respondents that it is necessary to doubt the respondents' representations that their failure to pay was because they were owed sums by others. Indeed, on the face of it the respondents simply misled the Authority about the availability of a quick solution and, accordingly, it is proper for the way Mr Johnston has been treated to sound in compensation if that is legally available.

[9] The short point is that there is no evidence that Mr Johnston ever raised a personal grievance with the respondents or that he sought compensation for their wrongdoing within the 90 days required by law. In those circumstances there is no basis on which compensation can now be awarded.

[10] However, if Mr Johnson wishes to seek leave of the Authority to raise his personal grievance outside the time required by law because of *exceptional circumstances* he may do so and this will be considered by the Authority. Of course, the views of the respondents will also be sought.

[11] The attention of the Authority has been drawn to the fact that the substantive decision erroneously refers to one of the respondents, in the entituling, as Karamea Quarry and Mining Limited when the correct name is Karamea Quarry and Concrete Limited. Both Notices of Direction and the material filed by the respondents, together with the information held by the Registrar of Companies, correctly refers to Karamea Quarry and Concrete Limited. I now direct that the reference in the substantive determination to Karamea Quarry and Mining Ltd (a non existent entity) is to be read as referring to the correct name, Karamea Quarry and Concrete Limited. A corrected determination correctly entituled has issued.

Certificate of determination

[12] A certificate of determination is sought by Mr Johnston and the Authority directs that such certificate issue against the respondents jointly and severally.

James Crichton
Member of the Employment Relations Authority