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Kevey v Inspire Enterprises Limited AA430/10 (Auckland) [2010] NZERA 784 (1 October 2010)

Last Updated: 18 November 2010

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

AA 430/10 5310263

BETWEEN GINNY KEVEY

Applicant

AND INSPIRE ENTERPRISES

LIMITED Respondent

Member of Authority: Representatives:

Investigation Meeting: Determination:

Rachel Larmer Applicant in person

Don Bain, Graham Wilkinson and Stephen Long, Directors of the Respondent

2 September 2010 and 1 October 2010 at Auckland

1 October 2010

DETERMINATION OF THE AUTHORITY

A. Inspire Enterprises Limited is ordered to comply, within 28 days of the date of this determination, with the Authority's determination AA412/09 dated 18 November 2009.

Employment Relationship Problem

[1] Ms Kevey was awarded \$3992 as lost remuneration and \$6,000 pursuant to [s123\(1\)\(c\)\(i\)](#) of the [Employment Relations Act 2000](#) in the Authority's determination AA 412/09 dated 18 November 2009 (together referred to as "the amount").

[2] Despite attempts to recover this amount voluntarily, she has not yet been paid anything. She has applied to the Authority for a compliance order.

[3] Inspire Enterprises Limited ("the respondent") accepts that the amounts claimed are payable and that no payments have been made. It says that the company has been unable to afford to pay Ms Kevey.

History

[4] This matter was first heard on 2 September 2010. However, during that investigation meeting, the parties jointly requested that the investigation meeting be adjourned until today to enable settlement discussions to occur. Those discussions were unsuccessful, and Ms Kevey now seeks a compliance order.

Evidence

[5] I heard evidence from Don Bain, Graham Wilkinson, and Stephen Long who are the respondent's three directors ("the directors") and received an affidavit from Peter Forde, the respondent's accountant. I also heard from Ms Kevey.

[6] Ms Kevey believed her solicitor had been attempting to recover the amount she had been awarded since shortly after the determination was received. Mr Bain said discussions did not start until February 2010.

[7] The parties agree that they entered into an arrangement for the amount to be repaid in monthly instalments of \$2,000. When this did not occur, the respondent represented to Ms Kevey that it would start the payments the following month. When nothing was paid the parties in May 2010 agreed to change the amount of the monthly instalment to \$1,000 per month. However, no money was received as a result of that arrangement.

[8] The directors say they were unable to pay because they were using all of the respondent's funds as well as some of their own personal financial resources to keep the business afloat. They say there was nothing left over to pay Ms Kevey, which they say was as a result of the recession rather than any fault by the directors.

[9] The directors say that the respondent's bank pressured it to sell the business for approximately \$200,000 less than what it would have been worth in a normal market. The sale went through on 17 August 2010 and since then the respondent has ceased trading. It is not currently in liquidation or receivership, and the directors said they hope to avoid that, although it is a possible outcome of the situation the respondent now finds itself in.

[10] I saw the respondent's BNZ bank account statement dated 30 September 2010 which showed it was \$663.73 in credit and that a number of dishonour transactions were recorded in the period 20 - 30 September 2010.

[11] The directors say that since April 2009 they have put \$116,961 of their own money into the respondent to prop it up, but that they are unable to contribute any more funds due to their own personal financial circumstances.

Determination

[12] There is no dispute that the Authority's determination of 18 November 2009 has not been complied with. Ms Kevey is owed \$3992 from which tax is to be deducted plus \$6,000 which is a tax free amount.

[13] Ms Kevey is legally entitled to be paid the money she is owed. Compliance is a discretionary remedy, and I consider it appropriate to exercise my discretion in her favour. Ms Kevey's previous attempts to obtain this money without a compliance order have been unsuccessful. Without a compliance order I believe she will not receive any money. I consider that her best prospect of obtaining some if not all of the money awarded to her is if a compliance order is issued.

[14] The respondent is still a registered company, despite it not currently trading. The directors said they were in the process of seeking options to avoid liquidation, so it may be that the respondent's position changes in future. Likewise the directors have previously put money in to the business in the past, so they may decide to do so again in future.

[15] For these reasons, I order that the respondent to pay Ms Kevey, within 28 days of the date of this determination \$3992 (gross) plus \$6,000 (without deduction).

Costs

[16] Neither party was represented, so no issue as to costs arises.

Rachel Larmer

Member of the Employment Relations Authority