

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2012] NZERA Auckland 391  
5390239

BETWEEN IFROZ KHAN  
Applicant

A N D EMPIRE CLEANING  
SERVICES LIMITED  
Respondent

Member of Authority: T G Tetitaha  
Representatives: Kerry Wood, Advocate for Applicant  
No appearance by Respondent  
Investigation Meeting: 24 October 2012 at Auckland  
Date of Determination: 31 October 2012

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**DETERMINATION OF THE AUTHORITY**

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- A. An order pursuant to s.131 of the Act that the respondent pay to the applicant the sum of \$2,000.00.**
- B. An order pursuant to clause 11 Schedule 2 of the Act for interest on the judgment sum set out in paragraph a) at the rate of 5 % per annum calculated from 5 July 2012 until payment.**
- C. An order pursuant to clause 15 Schedule 2 of the Act for the respondent to pay \$71.56 towards the applicants costs.**

**Employment relationship problem**

[1] The applicant was employed by the respondent until the employment was terminated on 5 July 2012.

[2] The applicant seeks payment for wage arrears of \$2,000.00.

## **Issues**

[3] There is a preliminary issue regarding the absence of the respondent at the investigation hearing. The Authority has the power to proceed if a party fails to attend a hearing pursuant to clause 12 of Schedule 2 of the Act:

**12. Power to proceed if any party fails to attend**

*If, without good cause shown, any party to a matter before the Authority fails to attend or be represented, the Authority may act as fully in the matter before it as if that party had duly attended or been represented.*

[4] No good cause has been shown for the failure to attend as the respondent has not contacted the Authority to explain its absence.

[5] The statement of problem was served on the respondent by the Authority on or about 30 July 2012. No statement in reply has been filed by the respondent.

[6] Notice of a teleconference on 2 October 2012 at 10.30am setting down the investigation meeting was served on the respondent on or about 28 September 2012. The respondent failed to attend the teleconference. Attempts to again reach the respondent at its nominated telephone number were unsuccessful.

[7] Notices for the investigation meeting were served on the respondent on or about 3 October 2012. The Authority's support officer attempted to contact the respondent on the morning of hearing to ascertain its whereabouts. The telephone numbers provided are either no longer in service or incorrect.

[8] In view of the above efforts to contact the respondent and its failure to file any document or attend the teleconference and investigation meeting, the Authority is satisfied it may continue to hear this matter today.

[9] The single issue for determination is whether an order pursuant to s.131 of the Employment Relations Act 2000 ("Act") should be made requiring the respondent to pay the applicant the sum of \$2,000.00.

## **Facts**

[10] The applicant was employed by the respondent cleaning company as a sales representative.

[11] The applicant has alleged he had not been paid any wages since the start of his employment on or about 4 June 2012. The employment agreement signed by the applicant set out a base salary of \$24,000 per annum gross and various commissions upon reaching sales targets.

[12] Following non-payment of wages the applicant terminated his employment by email dated 5 July 2012.

[13] The applicant did not appear in person at the investigation meeting but was represented by his advocate, Mr Kerry Wood.

[14] The period of 4 June to 5 July 2012 represents one month's employment. One twelfth of \$24,000 per annum equates to \$2,000.00.

[15] Accordingly the Authority determines on the evidence before it there has been default in payment to the applicant of wage arrears totalling \$2,000.00 by the respondent.

[16] The Authority further determines the applicant is entitled to interest of 5% on the judgment sum from the date of termination being 5 July 2012 until payment.

### **Costs**

[17] The applicant was self-represented but incurred the cost of the Authority filing fee of \$71.56.

[18] The Authority determines this disbursement is a reasonable cost for the applicant to recover and an order for costs shall issue accordingly.

### **Determination**

[19] The following orders are made:

- a. An order pursuant to s.131 of the Act that the respondent pay to the applicant the sum of \$2,000.00.
- b. An order pursuant to clause 11 Schedule 2 of the Act for interest on the judgment sum set out in paragraph a) at the rate of 5 % per annum calculated from 5 July 2012 until payment.

- c. An order pursuant to clause 15 Schedule 2 of the Act for the respondent to pay \$71.56 towards the applicants costs.

Tania Tetitaha  
Member of the Employment Relations Authority