

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 365
5353106

BETWEEN	IAN KOERSELMAN Applicant
AND	JOINERS NS LIMITED First Respondent
AND	JOHN RICHARDSON Second Respondent

Member of Authority: K J Anderson

Representatives: P Skelton, Counsel for Applicant
J Richardson, Advocate for Respondents

Investigation: On the papers

Determination: 17 August 2011

CONSENT DETERMINATION OF THE AUTHORITY

[1] On 11th August 2011, the Authority received an urgent application from Mr Koerselman seeking an order from the Authority pertaining to the failure of the First Respondent (Joiners NS Limited), to pay to him arrears of wages and holiday pay of the gross sum of \$10,886.84. Mr Koerselman also sought orders in regard to an award of interest pursuant to clause 11 of Schedule 2 of the Employment Relations Act 2000 (the Act) and the imposition of a penalty pursuant to s.134(1) of the Act, pertaining to a breach of his employment agreement relating to the failure to pay the monies due to him.

[2] It is accepted that this matter should be treated with some urgency given that the Applicant has concerns about his ability to recover the monies due to him should the First Respondent be placed into liquidation given its apparent parlous financial position.

[3] A conference call took place with the parties on 16th August 2011. Immediately prior to this, the Authority received a memorandum from Mr Skelton (for the Applicant); the substance of which is:

I [Mr Skelton] have spoken to Mr Richardson who has confirmed that he does not dispute that the First Respondent owes the Applicant the monies claimed. He says that the First Respondent has only \$100 in its bank account and so is not in a position to pay the wages and holiday pay due. He says that the First Respondent is expecting to receive further funds by the end of the month.

And further:

In summary, the Applicant will be seeking an immediate order (by consent) that the First Respondent pay to the Applicant \$10,886.84 (gross) for wages and holiday pay due and owing to him, together with the sum of \$64.90 being interest on the net amount of wages due and owing at the rate of 5% from the date the wages should have been paid to 16 August 2011, as calculated in accordance with Schedule A attached to this memorandum.

[4] During the conference call with the parties on 16th August 2011, Mr Richardson confirmed to me that Mr Koerselman is entitled to the monies claimed. I also explained to Mr Richardson the concept and effect of a consent determination by the Authority and that the Applicant was reserving his rights to return to the Authority and pursue the remedies of a penalty and a costs award in the event that payment is not made on or before 5th September 2011. Mr Richardson confirmed to me that he understood the effect of an order by consent and he agreed that such a course of action was acceptable and appropriate in the circumstances.

[5] Therefore, I record that the parties have agreed that, on or before 5th September 2011, Joiners NS Limited will pay to Mr Koerselman the gross sum of \$10,886.84 being wage arrears and holiday pay due to him; along with a further sum of \$64.90 being interest owing at the rate of 5% from the date that the wages should have been paid to 16th August 2011.

[6] By consent and by this determination, the terms agreed to, as set out above, become the orders of the Authority.

[7] No order is sought as to costs.

K J Anderson
Member of the Employment Relations Authority