

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 46/08
5114109

BETWEEN

LABOUR INSPECTOR
ADRIENNE LINES
Applicant

AND

JONATHAN McCARTHY
Respondent

Member of Authority: James Crichton
Representatives: Adrienne Lines for Applicant
No appearance for Respondent
Investigation Meeting: Decision On Papers
Determination: 29 April 2008

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant Labour Inspector (Ms Lines) alleges that the respondent Jonathan McCarthy (Mr McCarthy) has failed to comply with a demand notice served on him pursuant to s.224 of the Employment Relations Act 2000.

[2] The Authority is asked to make a compliance order under s.137 of the Act to enforce the terms of the demand notice and is also asked to make an order requiring Mr McCarthy to pay the \$70 lodgment fee to the Labour Inspector.

[3] The demand notice was served on Mr McCarthy on 10 December 2007 and although no objection has been lodged with the Authority within the requisite time as s.225 of the Act provides, Mr McCarthy has made successive reductions in the debt outstanding such that the demand notice when served required the payment of \$731.49 whereas the compliance order was only sought in respect to a figure of \$200.

[4] This is because Mr McCarthy has, since the serving of the demand notice made three separate payments on differing dates, the first two of which were for \$200 each and the final payment made in early February 2008 for \$131.49 leaving an outstanding balance of \$200.

[5] When Ms Lines' application came before the Authority, I instructed the parties to make themselves available by way of telephone conference in the hope of encouraging Mr McCarthy to meet his obligations in a voluntary way. Despite the Senior Support Officer of the Authority writing to the employer in the clearest terms as to the arrangements made for the telephone conference, Mr McCarthy neither contacted the Authority to alter the arrangement nor made himself available to participate in the telephone conference.

[6] Where, as in this case, no objection to the demand notice is lodged with the Authority, then in terms of s.225(4) of the Act, the demand notice imposes a legal requirement on the employer to comply with it and is *prima facie* evidence that the money now specified in the demand notice (but varied to the extent referred to in this determination) is owed by the employer to the employee.

Determination

[7] I am satisfied that the demand notice was properly served on Mr McCarthy on 10 December 2007 and that Mr McCarthy had the appropriate information available to him in order to decide whether or not to lodge an objection to that demand notice, and that the time for that objection to be lodged has now passed. Mr McCarthy did not in fact lodge an objection to the demand notice within time. The sum specified in the demand notice, but less the amounts already paid, being a net sum of \$200 gross of holiday pay owed to Mike Chilton, together with a filing fee of \$70, has not been paid.

[8] As the employer, Mr McCarthy, has not exercised his right to object in this particular matter, nor has he met his obligations by paying the sums referred to in the demand notice (or the amount still outstanding) I direct that Mr McCarthy is to comply with the effect of the demand notice dated 10 December 2007 by paying to the Labour Inspectorate, PO Box 13278, Christchurch, for the attention of Ms Lines, the total sum of \$270. That payment is to be made within 14 days of the date of this determination.

[9] Ms Lines is asked to ensure that the \$200 is paid directly it becomes available without deduction to Mike Chilton whose entitlement that payment is.

[10] I desire to add one further particular. Mr McCarthy is a legal practitioner and as such an officer of the Court. It is disappointing to note that in the matter before me, Mr McCarthy has chosen, not only to ignore the Labour Inspector, but also to fail to appropriately engage with the Authority's process. As such, he has been disrespectful to the Authority and in the Authority's view, failed to live up to the high standards the legal profession sets itself. In all the circumstances I have decided to refer this determination to the Executive Director of the Canterbury District Law Society for consideration by his Council.

Costs

[11] Costs are to lie where they fall.

James Crichton
Member of the Employment Relations Authority