

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 128/09
5160444

BETWEEN	LABOUR INSPECTOR	
	Applicant	
AND	NEWZEALAND LIMITED	VINES
	Respondent	

Member of Authority: Philip Cheyne

Representatives: Douglas Hixon, Labour Inspector in person
No appearance for the respondent

Investigation meeting: 11 August 2009 at Nelson

Determination: 12 August 2009

DETERMINATION OF THE AUTHORITY

[1] NEWZEALAND VINES LIMITED is incorporated as a company and operates a business in Marlborough in which it employed Gonzalo Burgardt and Carolina Burgardt between August and September 2007. After the employment ended Mr Burgardt and Ms Burgardt complained to a Labour Inspector about not being paid. The Labour Inspector investigated and eventually, on 29 January 2009, served a demand notice on Tripta Tripta, the company's sole director and shareholder. The demand notice required the company to pay \$2,012.17, being the Labour Inspector's calculation of arrears under the Minimum Wages Act 1983 less an amount that he was prepared to accept had been paid.

[2] When the company did not lodge an objection to the demand notice or meet its obligation under the notice to pay \$2,012.17, these proceedings were lodged with the Authority. The Authority sent the statement of problem to a PO Box given for the respondent but there was no response. The statement of problem and a notice of investigation meeting for 11 August 2009 were then served on the company at its registered office and, on 26 June 2009, on Ms Tripta in person as the company's sole director and shareholder. The company did not respond to service on it of those documents.

Request for an adjournment

[3] On 10 August 2009 the Authority received by fax a request by Rajesh Luthra for an adjournment of the investigation meeting. I understand that Mr Luthra is Ms Tripta's husband and is presumably involved in the administration of the company's affairs. The fax says that Mr Luthra is not feeling well and has an appointment with a doctor in Blenheim at 10.15 am on 11 August 2009. Nothing else was received from the company or Mr Luthra. In particular, there is no explanation about why Mr Luthra not feeling well might prevent the respondent attending the investigation meeting.

[4] The Authority copied the fax to the Labour Inspector who expressed some doubts about the veracity of the reason given for an adjournment and pointed to the lengthy history by the respondent, Mr Luthra and Ms Tripta of failing to engage with his investigation and these proceedings. Mr Hixon thought that the adjournment request was another attempt to avoid the day of reckoning.

[5] There is plenty of information on the file to support the Labour Inspector's perspective. Accordingly the request for an adjournment was declined and both parties were advised.

No appearance by the respondent

[6] Consistent with the company's failure to lodge a statement in reply or indeed properly engage with the Labour Inspector's investigation, there was no appearance by anyone for the company at the investigation meeting at 2pm on 11 August 2009 (or for the next hour). In the absence of any good reason for this failure I decided to proceed. Mr Hixon confirmed the truth of the allegations of fact set out in the

statement of problem and answered my questions. There is no reason to doubt any of his evidence.

Compliance order

[7] The effects of the Labour Inspector's demand notice are specified in s.225(4) of the Employment Relations Act 2000. Being served imposed a legal requirement on the company to comply with the notice and it supports the current application for a compliance order or other enforcement action. Prima facie, it is evidence of the company's debt to the Labour Inspector on behalf of Mr Burgardt and Ms Burgardt.

[8] The company could have lodged an objection to the demand notice but had to do so within 28 days after 29 January 2009 when it was served with the demand notice. Mr Hixon specifically pointed this out to Ms Tripta at the time. However, the company did nothing. Even to this point the company has not sought leave to extend the time for it to lodge an objection to the demand notice. Absent such action by the company I do not intend to re-examine the merits of the demand notice.

[9] The Authority is empowered to make a compliance order where a person has not observed or complied with a demand notice: see s.137(1)(a)(iv) of the Employment Relations Act 2000. I am satisfied that the respondent has not complied with the demand notice.

[10] There are indications on the file that Mr Luthra or Ms Tripta dispute that anything is owed but it is not surprising that this position was rejected by the Labour Inspector. I infer that their behaviour is simply stubborn resistance to meeting the respondent's legal obligations. There should be a compliance order requiring compliance with the demand notice.

Orders

[11] The respondent is ordered to comply with the demand notice dated 13 January 2009 by paying to the Labour Inspector for the use of Mr Burgardt and Ms Burgardt the sum of \$2,012.17 (gross) within 10 working days of the date of service on it by the Labour Inspector of a copy of this determination.

[12] Attached to this determination is an extract from s.140 of the Employment Relations Act 2000 to make clear to the respondent that any non-compliance with this compliance order could result in imprisonment, fines and/or sequestration.

[13] The respondent is ordered to pay interest to the Labour Inspector for the use of Mr Burgardt and Ms Burgardt on the sum of \$2,012.17 at the rate of 4.5% per annum commencing on 29 January 2009 until that sum is paid in full.

[14] The respondent is ordered to pay costs of \$70.00 to the Labour Inspector.

Good faith

[15] For the reasons touched on above, I consider that the respondent has not participated in the Authority's investigation in a manner designed to resolve the issues involved.

Philip Cheyne
Member of the Employment Relations Authority