

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2016] NZERA Auckland 316
5634146

BETWEEN A LABOUR INSPECTOR OF
 THE MINISTRY OF
 BUSINESS INNOVATION
 AND EMPLOYMENT
 Applicant

AND PRESANNA
 THILAKARATNE
 Respondent

Member of Authority: Andrew Dallas

Representatives: Alastair Dumbleton, Counsel for the Applicant
 No Appearance for the Respondent

Investigation meeting On the papers

Determination: 16 September 2016

DETERMINATION OF THE AUTHORITY (No.2)

A. Presanna Thilakaratne must comply with the Authority's determination of 2 May 2016 on or before 24 September 2016.

B. Presanna Thilakaratne must pay the Labour Inspector on behalf of the Ministry of Business, Innovation and Employment on or before 24 September 2016:

- a. \$350.00 as a contribution to costs; and**
- b. \$71.56 as reimbursement of the Authority's filing fee.**

Employment Relations Problem

[1] In *A Labour Inspector of the Ministry of Business Innovation and Employment v Presanna Thilakaratne*¹ (substantive determination), the Authority authorised a Labour Inspector, Kate Feeney, to bring an action against Presanna Thilakaratne, as director of Danuja International (PVT) Limited (Danjuja) under s 234 of the Employment Relations Act 2000 (the Act).

¹[2016] NZERA 132

[2] The Authority further found Mr Thilakaratne jointly and severally liable with Danuja for \$1965.38 gross in outstanding holiday pay owing to two former Danjua employees.

[3] Mr Thilakaratne did not challenge the Authority's determination to the Employment Court.

[4] Mr Thilakaratne did not comply with the Labour Inspectorate's requests to pay the outstanding holiday pay.

[5] On 7 July 2016, Labour Inspector, David Myatt lodged a Statement of Problem seeking compliance with the Authority's substantive determination. He also sought a contribution to costs and reimbursement of the Authority's filing fee.

[6] The Chief of the Authority directed Mr Thilakaratne be personally served with the Statement of Problem. Having reviewed the Affidavit for Service sworn by Labour Inspector Myatt on 12 July 2016, I am satisfied Mr Thilakaratne was properly served.

[7] Mr Thilakaratne did not lodge a Statement in Reply or seek leave of the Authority to lodge out of time. He did not otherwise engage in the Authority's processes.

[8] I determined the matter under s 174D(1) of the Act.

Compliance Order

[9] The Labour Inspector requested that Mr Thilakaratne be required to comply with the substantive determination within seven days.

[10] It is appropriate to make a compliance order in the circumstance of this case. Mr Thilakaratne must comply with the Authority's substantive determination on or before 24 September 2016.

[11] Failure by Mr Thilakaratne to comply with this compliance order may result in the Labour Inspector applying to the Employment Court to exercise its powers under s 140(6) of the Act. Remedies can include an order that the person in default be sentenced to imprisonment for a term not exceeding three months and/or a fine not exceeding \$40,000.

Costs

[12] The Labour Inspector sought costs. In the substantive determination the Authority awarded the Labour Inspector \$350.00 based on the Authority's then applicable nominal daily tariff of \$3500.00. In the absence of any submissions from Mr Thilakaratne and adopting the same approach, Mr Thilakaratne must pay \$350.00 as a reasonable contribution to the Labour Inspector costs.

[13] The Labour Inspector should also be reimbursed for the Authority's filing fee of \$71.56.

[14] Mr Thilakaratne must pay these amounts to the Labour Inspector on behalf of the Ministry of Business, Innovation and Employment on or before 24 September 2016.



Andrew Dallas
Member of the Employment Relations Authority