

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Adrienne Anne Lines, Labour Inspector (Applicant)
AND Butlers Fruit Farms Limited (Respondent)
REPRESENTATIVES Jenny Waterworth, Counsel for Applicant
Jacqueline Butler for Respondent
MEMBER OF AUTHORITY James Crichton
**TELEPHONE
CONFERENCES** 23 May 2005, 30 May 2005
DATE OF DETERMINATION 2 June 2005

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

- [1] This is a compliance order application by the Labour Inspector at Christchurch (the Labour Inspector) against Butlers Fruit Farms Limited (Butlers).
- [2] The matter comes before the Authority at this time because the Labour Inspector has served on Butlers a demand notice in respect to wages owed to Isabel Hay in the sum of \$2,599.98.
- [3] That demand notice was not the subject of an objection within time and the question of whether the respondent should be allowed additional time to lodge an objection was considered by the Authority on 30 June 2004.
- [4] On 16 July 2004 the Authority issued a determination declining to extend the time limit for lodging an objection as a consequence of which the demand notice stands.
- [5] The Labour Inspector now seeks a compliance order to enforce that demand notice.

The Identity of the Respondent

- [6] The Labour Inspector originally commenced these proceedings against Jacqueline and Donald Butler trading as Butlers Fruit Farms of Hook.
- [7] In filing the amended statement of problem on 9 February 2005, the Labour Inspector sought to have the Authority amend the respondents name to Butlers Fruit Farms Limited.
- [8] I am satisfied that the employer of Isabel Hay is indeed Butlers Fruit Farms Limited. Accordingly the respondent is Butlers Fruit Farms Limited.

Applicant's Position

- [9] The applicant's position essentially is that it has:
- a) received a request from the employee Isabel Hay to recover unpaid wages from Butlers
 - b) considered and investigated that request and in particular discussed it with Butlers
 - c) reached a decision about the quantum owed by Butlers and advised them of that, seeking their consent to pay
 - d) in the absence of an agreement to pay from Butlers, issued a demand notice in respect to the sum in question
 - e) successfully defeated a claim from Butlers for extra time to lodge an objection to the demands notice
 - f) sought to recover the sums owing from Butlers since mid July 2004
 - g) in the absence of an agreement to pay the sum owed pursuant to the demand notice, seeks a compliance order requiring payment of the demand notice sum.

Butlers Position

[10] Butlers say that they have always wanted to sit down with the employee and resolve matters by agreement. However their stipulation that this discussion proceed with the employee present has created difficulty because the employee has asked the Labour Inspector to deal with the matter on her behalf. This is the employees' right. It may be regrettable that the parties are not able to sit down together and resolve matters, but it is not a requirement of the law that this happen.

[11] In the absence of this meeting between employer and former employee which Butlers seem so committed to, I was told that there was no agreement from Butlers as to the calculation made by the Labour Inspector in respect to the wages due and owing. That is unfortunate but not determinative.

[12] Butlers have, in my judgement, had ample opportunity to debate matters with the Labour Inspector before the issue of the demand notice. It is for Butlers to satisfy the Labour Inspector that the Inspector's calculations in respect to the matter at hand are wrong and they have not done that.

[13] Butlers also contend that the way in which this matter was progressed was confusing to them at least in part because they say that at various times, they heard from various entities involved in the dispute and they say they became confused as to what was actually going on.

[14] Of particular moment is Butlers suggestion that at the very time that the demand notice issued they were in the throws of arranging for a mediation to take place. Critically, the mediation was suggested by a senior Labour Inspector who Butlers say they contacted when they became disgruntled with the approach taken by the Labour Inspector at Christchurch.

[15] Butlers allege that the demand notice (which issued from the Labour Inspectorate at Christchurch) arrived while they were in the process of organising the mediation which had been proposed by a more senior Labour Inspector from Auckland. They say this is why they did not open the demand notice until the last minute and did not treat it with the urgency which they might otherwise have accorded it.

[16] However, this information is not consistent with the file note prepared by the Senior Labour Inspector, Auckland which, referring to a conversation between Mrs Butler and the Auckland Labour Inspector on 25 February 2004 indicates that while mediation was proposed by the Labour Inspectorate, it was not agreed to by Butlers.

[17] Even if Butlers had been fully engaged with the mediation suggestion on the footing that it was proposed by the Labour Inspectorate, that does not in my view entitle Butlers to ignore official correspondence simply because it appears to them that something else maybe happening.

Orders

[18] I now order Butlers Fruit Farms Limited to comply with the demand notice issued to it pursuant Section 224 of the Employment Relations Act 2000 and to do so by 30 June 2005.

[19] The Labour Inspector is entitled to be reimbursed for the lodgement fee on this application and accordingly Butlers Fruit Farms Limited is ordered to pay \$70.00 to the Labour Inspectorate at Christchurch in reimbursement of that fee.

[20] The Labour Inspector is to immediately serve a copy of this determination on Butlers Fruit Farms Limited.

[21] Costs are reserved.

James Crichton
Member of Employment Relations Authority