

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Kris Michael Metcalf, Labour Inspector

AND Kim Lyons and
Tony Gaddes

REPRESENTATIVES Kris Metcalf, In Person
No Appearance for Respondent

MEMBER OF AUTHORITY Vicki Campbell

INVESTIGATION MEETING 18 May 2006

DATE OF DETERMINATION 19 May 2006

DETERMINATION OF THE AUTHORITY

- [1] This employment relationship problem concerns the recovery of arrears of wages and holiday pay. Mr Kris Metcalf, a Labour Inspector from Auckland, filed a statement of problem in the Employment Relations Authority on 22 December 2005. No statement in reply has been received from the respondents. A minute was issued to the parties setting the matter down for an investigation meeting. In that minute I advised Mr Lyons and Mr Gaddes that as they had failed to file a statement in reply they would require leave to respond to, or defend the matter.
- [2] A copy of the notice of investigation meeting was couriered to each respondent. One document was signed for by "Lyon" and the other by "Lyons". Ms Lyons and Mr Gaddes are partners. I am satisfied the respondents have been served notice of the investigation meeting.
- [3] At about 8.30am on 18 May 2006, Mr Michael Barraclough, Employment Relations Authority Support Officer, endeavoured to make contact with the respondents to confirm they would attend the investigation meeting due to be held at 1.30pm.
- [4] Mr Barraclough reports that he phoned the contact number for the respondents, which was answered by a female named Kelly, who says she had never heard of either of the respondents and that she had received the telephone number from Telecom as a new

listing in October 2005. Mr Barraclough was unable to find any other phone listing for either of the respondents in the phone book.

- [5] The investigation meeting commenced at 1.30pm on 18 May 2006. The notice setting down the investigation meeting sets out the consequences of non-attendance. I adjourned the meeting briefly at 1.35pm to allow the respondents the opportunity to appear. During the adjournment I took the opportunity to check the white pages listings on the internet. This search confirmed Mr Barraclough's previous advice that no listings for either Ms Lyons or Mr Gaddes could be found.
- [6] I considered the matter in terms of Clause 12 of Schedule 2 of the Act which empowers the Authority to proceed to act fully in a matter if a party fails to attend or be represented without good cause.
- [7] I did not consider that the respondent had shown "good cause" for its failure to attend the investigation meeting. Accordingly, I proceeded to act as fully in the matter as if the respondent had attended.

Recovery of Wages

- [8] Mr Metcalf claims Mr Jason Brendon is owed \$1,080.00 in arrears of wages and outstanding holiday pay of \$237.60. Mr Metcalf, on behalf of Mr Brendon, telephoned Ms Lyons on 11 January 2005 and it was agreed the arrears were due. On 9 September 2005 Mr Metcalf made out a written claim and forwarded it to Ms Lyons and Mr Gaddes. No response was received from the respondents. Mr Metcalf then wrote to the and advised the respondents that if payment was not received by 14 October 2005 proceedings would be commenced in the Employment Relations Authority.
- [9] I am satisfied the amounts claimed are due.

Ms Lyons and Mr Geddes, are ordered, pursuant to section 228(1) of the Employment Relations Act 2000 to pay to the Labour Inspector the sum of \$1,317 as arrears of wages and holiday pay. This amount is to be paid within 28 days of the date of this determination.

- [10] Mr Metcalf has claimed interest on the above amount. As Mr Brendon has not had the use of the money since the termination of his employment on 18 September 2004 I think it fit that he have interest on it.

Ms Lyons and Mr Gaddes are ordered to pay interest of 9.5% on the outstanding wages and holiday pay, from 20 September 2004 until the date of payment, in accordance with this determination.

Costs

[11] This application required a filing fee of \$70.00. It is appropriate that the respondents reimburse the fee.

Ms Lyons and Mr Gaddes are ordered to pay to the Auckland office of the Department of Labour the sum of \$70.00, within 28 days of the date of this determination.

Vicki Campbell
Member of Employment Relations Authority