

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 533
5434542

BETWEEN	DAVID MYATT (LABOUR INSPECTOR) Applicant
A N D	COMMUNITY MEDICAL CENTRE LIMITED Respondent

Member of Authority:	James Crichton
Representatives:	Applicant in person No appearance for Respondent
Investigation Meeting:	On the papers
Date of Determination:	19 November 2013

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant Labour Inspector (Mr Myatt or the Labour Inspector), seeks a compliance order requiring the respondent (Community Medical Centre) to comply fully with the terms of the Improvement Notice dated 3 September 2013.

[2] Community Medical Centre says in its statement in reply to the Labour Inspector's application that it has sustained a major cashflow crisis which has both taken all its energy to try to resolve, as well as having the obvious effect of reducing access to operational capital.

[3] Furthermore, in respect of one of the employees specifically referred to in the Improvement Notice, Community Medical Centre maintains that all payments are up-to-date and in respect of the other employee specifically referred to, it is alleged there are issues Mr Myatt has not taken into account in reaching the conclusions that he has.

[4] However, it is apparent from a perusal of the application filed by the Labour Inspector that the decision to issue an Improvement Notice was informed by first, admissions made by Community Medical Centre and second by a reasonable belief formed by the Labour Inspector that other breaches of the minimum code had been made as well.

[5] The admissions made by Community Medical Centre were to the effect that, at the time Mr Myatt visited the Community Medical Centre on 26 August 2013, the employer was “*several weeks behind*” in paying wages to its staff.

[6] Moreover, Mr Myatt formed a reasonable belief, based on inquiry, that the correct entitlements to annual leave and public holidays were not always being attended to, that requests for wage and time records for staff were being ignored, and one employee did not have a written employment agreement as the law requires.

[7] It is apparent from the statement in reply and indeed from the responses given to the Labour Inspector by Community Medical Centre, that Community Medical Centre has suffered a significant financial impost as a consequence of the loss of funding provided in terms of the General Practice Provider Agreement dated 8 February 2012. That agreement was terminated, as it related to Community Medical Centre, with effect from midnight on 8 January 2013. Community Medical Centre says that that agreement constituted “*99.9% of the funding for medical clinics in New Zealand*”. Whether that percentage is accurate or not, it is self-evident that the loss of this funding source will have a major impact on Community Medical Centre’s ability to function.

[8] Indeed, it is apparent from the excellent paper trail supplied by the Labour Inspector that one of Community Medical Centre’s two clinics in South Auckland has now been closed, presumably as a consequence of the funding shortfall.

[9] While Community Medical Centre’s financial challenges may go some way to explaining why it has failed to meet its legal obligations to its staff, it does not, to put it loosely, constitute a slam dunk. The law of New Zealand requires that employees be protected by a range of minimum standard provisions in a number of employment law statutes (the minimum code), and those protections cannot and are not abrogated by the simple expedient of the employer falling upon hard times. The employer’s obligations remain, notwithstanding the financial difficulty. The employer has rights

to reorganise its business to take account of a reduction in income and those rights are protected in New Zealand law; but those rights do not extend to failing to apply the minimum code to staff members continuing in the employment.

[10] The Authority accepts that there may be some difference of opinion between the Labour Inspector and Community Medical Centre in respect of the detail of the employment of particular staff.

[11] But it is important for Community Medical Centre to understand that this Improvement Notice relied on representations made to the Labour Inspector by Community Medical Centre itself and by Mr Myatt's wider inquiries which included contact ultimately with two persons who had been employees of the Community Medical Centre.

[12] Generally, an Improvement Notice is issued where the Labour Inspector is satisfied that the employer is responsible for systemic failures to comply with the minimum code and the purpose of issuing such a notice is as much educative as it is regulatory.

Determination

[13] Nothing in the statement in reply persuades the Authority that the Labour Inspector is not entitled to have compliance with the full terms of the Improvement Notice issued on 3 September 2013. For the avoidance of doubt, full compliance with the terms of that Improvement Notice is required within 28 days of the date of this determination.

[14] Community Medical Centre is also to pay to the Labour Inspector the sum of \$71.56 being the Authority filing fee.

[15] Community Medical Centre needs to understand that the Authority has power to impose very significant financial penalties on it for failure to comply with an Improvement Notice. In the particular circumstances of this case, and because of the evidence of financial distress, the Authority is not minded to impose a penalty.

[16] However, Community Medical Centre must be aware that if it does not comply now with the requirements of the law and in particular ensure that all the

aspects of the Improvement Notice have been fulfilled within 28 days of the date of this determination, it risks further significant financial penalty.

James Crichton
Member of the Employment Relations Authority