

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 115/10
5282723
5282725

BETWEEN DAVID MYATT (LABOUR
INSPECTOR)
Applicant

AND THE SERVICE CENTRE
LIMITED
Respondent

Member of Authority: Dzintra King
Investigation Meeting: On the papers
Determination: 12 March 2010

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr. David Myatt, a Labour Inspector, seeks compliance orders with determinations made on 27 August 2009: AA 305/09 and AA306/09.

[2] The Authority ordered that the respondent pay the following sums:

- To Mr Richard Talagtag:
 1. \$2,341.63 gross annual holiday pay.
 2. Interest on that amount at the rate of 4.65%, the interest to run from 7 November 2008 until such time as the amount is paid in full.

- To Mr Kenneth Hewgill:
 1. \$1,927.68 gross annual holiday pay.

2. Interest on that amount at the rate of 4.65%, the interest to run from 7 November 2008 until such time as the amount is paid in full.

- To the Crown:
 1. Two penalties of \$3,000 each.

- To the applicant:
 1. The sum of \$140, being the filing fees for the two proceedings.

[3] Mr Myatt personally delivered copies of the relevant determinations to the registered office the respondent (Milne Maingay Chartered Accountants) on 2 September 2009 and later confirmed with Ms Kay Highland of Milne Maingay that the copies had been passed to the respondent.

[4] Mr Myatt received email correspondence from the respondent on 29 September 2009 in which the respondent acknowledged receipt of the determinations and advised he had no ability to pay the sums ordered.

[5] On 6 October 2009 the applicant lodged Statements of Problem seeking compliance orders. No response was received and on 29 October the Authority wrote requesting a Statement in Reply.

[6] On 29 October Mr Jeremy Amor, the director of the respondent, wrote saying he was unable to make the payments and did not dispute the amounts owed.

[7] On 4 November Mr Amor filed a Statement in Reply repeating that he did not dispute the debt but had no assets. He said he had applied to have the company removed from the Register. At the date of this determination the company is still registered.

[8] I asked the Labour Inspector to confirm that he wished to continue with the compliance order applications in light of the Statement of Reply.

[9] On 1 December 2009 Mr Myatt replied asking that the respondent produce some independently verified documentary evidence of his impecuniosities.

[10] On 14 December I had a conference call with the parties. Mr Amor agreed to provide relevant documents by 23 January 2010. Mr Amor said he had no money to pay his accountant so could not provide financial information. He agreed to provide bank statements for the period October 2008 to December 2008. Mr Amor agreed to provide documents showing that the company was no longer registered for the purpose of paying PAYE and GST to Inland Revenue. He said the company had ceased trading. Mr Amor was asked to provide information regarding any assets the company might have.

[11] On 28 January Mr Amor provided documents from his accountant showing the dates tax payments ceased, being 30 November 2008.

[12] He provided an internet printout showing transactions from 1 October 2008 till 5 January 2009. The printout does not specify whether this is a personal bank account or a company bank account or which bank it is. The printout does not provide balances. It does show a number of dishonour fees in December 2008.

[13] Mr Amor indicated this was all the information he had.

[14] He said when the company vacated the building there was a year left to run on the lease and there were some desks in the building but they were left there as the locks were changed due to rent payments not being made. I have no information regarding the company's assets other than a statement from Mr Amor with no supporting evidence.

[15] The Authority should not order compliance if there would be no practical benefit in doing so: *NZ (with exceptions) Electrical etc IUOW v Remtron Lighting Ltd (in rec)* [1990] 1 NZILR 583 and *NZ Clerical Workers Union v Huysers Books Ltd*, 17/12/91, Goddard CJ, WEC28/91.

[16] Because of the lack of satisfactory evidence from the respondent regarding its financial situation I am not satisfied that it is unable to meet its debts.

[17] Section 138 (4A) provides that if a compliance order relates in whole or part to the payment to an employee of a sum of money, the Authority may order payment to the employee by instalments, but only if the financial position of the employer requires it.

[18] I have considered this provision but I have the same difficulty as I have with being able to reach a conclusion about the company's financial status: an insufficiency of evidence.

[19] In the circumstances, I think justice be best served by making a compliance order that the respondent pay to the applicant the sums owing to Messrs Talagtag and Hewgill plus the interest.

[20] The respondent is also ordered to comply with the payment of the \$140 filing fees.

[21] These payments are to be made within 14 days of the date of this determination.

[22] The applicant has also sought two payments of \$70 each being the filing fee for these proceedings. The respondent is to pay the applicant the two filing fees for these proceedings.

Dzintra King

Member of the Employment Relations Authority