

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
OFFICE**

BETWEEN Gerhard Nortje (Applicant)
AND Encos Global Systems Ltd (Respondent)
REPRESENTATIVES Gerhard Nortje in person
No appearance for respondent
MEMBER OF AUTHORITY James Crichton
INVESTIGATION MEETING On the papers
DATE OF DETERMINATION 29 September 2006

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Dr Nortje) by a statement of problem filed in the Authority on 31 July last, alleges that the respondent, Encos Global Systems Limited (Encos) are in breach of the terms of a mediated settlement entered into between the parties on 21 December 2005.

[2] Encos, despite extensive efforts by the Authority and even their own representative, have failed to engage with the Authority in any meaningful way and, despite numerous attempts to make contact with the Authority or even to give their own representative proper instructions so that he is able to deal with the matter, have failed to take any of the opportunities advanced to them.

[3] It follows that no statement in reply has been filed and no proposal to resolve the issue between the parties has been made notwithstanding the conspicuous efforts of Encos's representative to endeavour to have his client meet their obligations under the Employment Relations Act 2000.

[4] In the circumstances, I am not persuaded that further delay in this matter is fair and just to Dr Nortje. By a notice of direction dated 28 September 2006, I directed that Encos have one final opportunity to engage in the Authority's process and the time for that engagement having now passed, I have prepared and instructed the issue of this determination.

[5] The terms of the mediated settlement entered into between the parties were that Encos was to pay to Dr Nortje a global sum within 7 days of the date of the mediation agreement.

[6] Dr Nortje agreed to accept that global sum by instalments and the evidence from Dr Nortje is that, by and large, those payments had been made in accordance with the varied agreement.

[7] That was until the final payment of \$1649.77 which was due and payable on 8 June 2006. It seems that the reason for the failure to pay is a cashflow problem which is also apparently the reason that Dr Nortje agreed to vary the terms of settlement informally so as to allow Encos the opportunity to smooth the cashflow consequences of the settlement sum.

Discussion

[8] There seems little doubt on the basis of the material before the Authority that Encos owes Dr Nortje the sum of \$1649.77.

[9] Dr Nortje now claims interest as well on the basis that he has had to wait for his money. There is no provision in the mediation agreement for interest to be paid but of course there was also no provision for the compensatory sum to be paid in instalments in the way that Dr Nortje subsequently agreed to accept.

Determination

[10] On the basis of the evidence before me, I am satisfied that Encos have not complied fully with the terms of the mediated settlement reached between itself and Dr Nortje on 21 December 2005. It is clear that the sum of \$1649.77 remains due and owing by Encos to Dr Nortje.

[11] Accordingly I order Encos to pay Dr Nortje the sum of \$1649.77 within 7 days of the date of this determination.

[12] I also order interest at the rate of 7 per cent per annum on the outstanding of sum of \$1649.77 from the due date of that sum being 8 June 2006 down to the date it is actually paid by Encos to Dr Nortje.

Costs

[13] Dr Nortje is entitled to reimbursement of the \$70 lodgement fee it cost him to bring this matter before the Authority. I order Encos to pay Dr Nortje \$70 within 7 days of the date of this determination. All other costs incurred by the parties are to lie where they fall.

James Crichton
Member of Employment Relations Authority