

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2018] NZERA Christchurch 183  
3034871

BETWEEN

DARREN OLIVER  
Applicant

AND

SCOTT HAULAGE 2010  
LIMITED  
Respondent

Member of Authority: Andrew Dallas

Representatives: Steven Zindel, counsel for the Applicant  
No appearance for the Respondent

Investigation Meeting: On the papers

Determination: 11 December 2018

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Mr Oliver says Scott Haulage 2010 Limited has not complied with three determinations of the Authority which found, in summary, he was an employee of Scott Haulage, he had a personal grievance arising out of his employment and that he was entitled to remedies and costs.<sup>1</sup> Mr Oliver was awarded:

- (i) \$15,392.50 in lost wages,
- (ii) holiday pay on lost wages of \$1231.40,
- (iii) unpaid holiday pay of \$619.88(net),
- (iv) unpaid overnight allowances of \$1600,
- (v) compensation for hurt, humiliation and injury to feelings of \$20,000;  
and,
- (vi) a penalty of \$5000.

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<sup>1</sup> See, *Oliver v Scott Haulage 2010 Limited* [2016] NZERA Christchurch 70

[2] Mr Oliver was also awarded interest as follows:

- (i) On the lost wages, holiday pay on lost wages and compensation for hurt, humiliation and injury to feelings, interest of 5% per annum from the date of the determination (26 May 2016) until paid in full; and
- (ii) On the unpaid overnight allowance and unpaid holiday pay, interest of 5% per annum from 4 January 2015 until paid in full.

[3] In a further determination, the Authority awarded Mr Oliver further amounts of unpaid holiday pay: \$362.78 (net) and \$210.31 (gross).<sup>2</sup>

[4] In a subsequent costs determination, the Authority awarded Mr Oliver \$5250 as a contribution to his costs and the reimbursement of Authority lodgement fees in the amount of \$224.89.<sup>3</sup>

[5] While a statement in reply was lodged by Scott Haulage which opposed the making of the compliance order, no further submissions were advanced and counsel initially acting for Scott Haulage withdrew prior to the Authority issuing this determination.

[6] Having considered the surrounding circumstances, I decided to investigate Mr Oliver's employment relationship problem on the papers under s 174D of the Employment Relations Act 2000 (the Act).

### **Compliance order**

[7] It is appropriate to make a compliance order in the circumstance of this case. Scott Haulage has not even attempted to comply with the Authority's determinations.

[8] Scott Haulage must comply with the Authority's determinations identified in paragraphs [1], [3] and [4] above and the orders made therein with 40 days of the date of this determination.

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<sup>2</sup> *Oliver v Scott Haulage 2010 Limited* [2016] NZERA Christchurch 101

<sup>3</sup> *Oliver v Scott Haulage 2010 Limited* [2016] NZERA Christchurch 141

[9] Failure by Scott Haulage to comply with the compliance order may result in Mr Oliver applying to the Employment Court to exercise its powers under s 140(6) of the Act. Remedies can include an order that the person in default be sentenced to imprisonment for a term not exceeding three months and/or a fine not exceeding \$40,000.

### **Costs**

[10] Costs are reserved. The parties are invited to resolve the matter between them. If they are unable to do so, Mr Oliver has 28 days from the date of this determination in which to file and serve a memorandum on costs. Scott Haulage has a further 14 days in which to file and serve a memorandum in reply.

[11] The parties could expect the Authority to determine costs, if asked to do so, on its usual “daily tariff” basis unless particular circumstances or factors require an adjustment upwards or downwards.<sup>4</sup>

Andrew Dallas  
Member of the Employment Relations Authority

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<sup>4</sup> This approach has been endorsed by two Full Courts of the Employment Court: see, *PBO Ltd v Da Cruz* [2005] ERNZ 808 and *Fagotti v Acme & Co Limited* [2015] NZEmpC 135