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Rogerson v Trenowa Holdings Limited (Wellington) [2017] NZERA 2046; [2017] NZERA Wellington 46 (1 June 2017)

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Rogerson v Trenowa Holdings Limited (Wellington) [2017] NZERA 2046 (1 June 2017); [2017] NZERA Wellington 46

Last Updated: 10 June 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

[2017] NZERA Wellington 46
5628588

BETWEEN GRANT ROGERSON Applicant

AND TRENOWA HOLDINGS LIMITED

AND

PETER JOHN Cullen

Respondents

Member of Authority: Trish MacKinnon

Representatives: Applicant in person

Glenn Brown for Respondent

Investigation Meeting: On the papers

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] In my determination of Grant Rogerson's personal grievance I found he had been unjustifiably dismissed by his former employer, Trenowa Holdings Limited trading as Blockbuster Video (Trenowa). I awarded him remedies of compensation and arrears of wages.¹ Mr Rogerson has not received any of those remedies and seeks payment of the awarded sums.

[2] Mr Rogerson filed an application for a compliance order against Trenowa and has also sought leave of the Authority to recover monies directly from Mr Peter John

Cullen, the sole director and a shareholder of Trenowa.

1 [2015] NZERA Wellington 88

[3] Mr Glenn Brown is the director of an accountancy firm in Whanganui. The address of the firm is also the address listed as the registered address for Trenowa. Mr Brown responded to the Authority's communications with Trenowa in respect of Mr Rogerson's personal grievance and arrears of wages claims. He also responded on behalf of Trenowa and Mr Cullen to Mr Rogerson's subsequent applications.

[4] Mr Brown has advised the Authority by email that Trenowa ceased trading and sold its remaining assets some time ago. Having done that, Mr Brown said the company "closed the doors and walked away." He subsequently advised neither the company nor Mr Cullen would attend an investigation meeting if one were held to investigate Mr Rogerson's application.

[5] An investigation meeting scheduled for 5 October 2016 was adjourned after Mr Brown had given evidence under affirmation. At that stage Registrar of Companies had notified it had initiated action to remove the company from the register and public notice had been given. The objection period had lapsed and the Registrar had notified it would continue with the removal process unless an objection had been received.

[6] Mr Rogerson has subsequently sought leave under [s. 142Y](#) of the [Employment Relations Act 2000](#) (the Act) to recover the sums awarded to him by the Authority against Mr Cullen personally. Both Trenowa and Mr Cullen remain as respondents.

[7] A telephone conference was convened with the parties on 1 March 2017 for the purpose of progressing the matter. It was agreed the Authority would need to determine whether leave could be granted under [s. 142Y](#) before the matter went further. That section was inserted into the Act on 1 April 2016 by [s. 19](#) of the [Employment Relations Amendment Act 2016](#), which was after the Authority's award of arrears and wages to Mr Rogerson.

[8] In the event I find it is not necessary for me to consider that matter. Despite Mr Brown's assertions regarding Trenowa, the company is still registered with the Companies Office. A recent check reveals it last filed an annual return on 2

December 2016. That being the case, the company, as the employer of Mr Rogerson, remains liable for the debt owing to him.

[9] Accordingly I order Trenowa Holdings Limited to comply, within 14 days of the date of this determination, with the orders made by the Authority on 7 September

2015 by paying Mr Rogerson in full the sums awarded to him. This order is made under s. 137 of the Act.

[10] Failure by Trenowa to comply with the compliance order may result in Mr Rogerson applying to the Employment Court. The court's powers under s.140 (6) of the Act include ordering that the person in default be sentenced to a term of imprisonment not exceeding 3 months and/or a fine not exceeding \$40,000.

Costs

[11] As Mr Rogerson represented himself, no issue as to costs arises other than in respect of the filing fee. Trenowa Holdings Ltd is further ordered to reimburse Mr Rogerson that fee in the sum of \$71.56.

Trish MacKinnon

Member of the Employment Relations Authority

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