

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Michael Shane Rolton (Applicant)
AND Ocean Fresh Harvest Limited (First Respondent)
AND Delking Distributors Limited (Second Respondent)

REPRESENTATIVES Melanie O'Neill, Counsel for Applicant
Gregory Denholm, Counsel for First and Second Respondents

MEMBER OF AUTHORITY Leon Robinson

DATE OF DETERMINATION 16 May 2005

SUPPLEMENTARY DETERMINATION OF THE AUTHORITY

- [1] This Determination supplements the substantive one I issued on 13 May 2005. There remains Mr Rolton's claim for penalties in respect of unpaid wages and car allowances.
- [2] It is established that the Authority in finding breaches of contract, is not obliged to impose penalties. It will however, normally do so where there is clear breach¹.
- [3] In *Ruapehu District Council v Northern Local Government Officers Union*² the Court stated:-
- Generally speaking, a penalty is appropriate only where there has been a wilful breach or default.*
- [4] I am not satisfied that the employer's failure or omission to pay wages and car allowances as they fell due was sufficiently wilful or deliberate as would justify and require a punitive response. My investigation did not yield any such supporting evidence.
- [5] Accordingly, I exercise my discretion so that **there will be no order for penalties.**

Leon Robinson
Member of Employment Relations Authority

¹ *PPP Industries Ltd v Doggett* [1996] 2 ERNZ 234

² unreported, WEC54/92, 16 November 1992, Castle J