

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Christine Sanderson (Applicant)
AND Computa Leta Services (1988) Limited (Respondent)
REPRESENTATIVES Timothy J Twomey, Counsel for Applicant
Terry Devlin, Advocate for Respondent
MEMBER OF AUTHORITY Philip Cheyne
DIRECTIONS CONFERENCE 27 March 2002
DATE OF DETERMINATION 28 March 2002

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mrs Sanderson was awarded compensation and costs because she had a personal grievance against her former employer. The employer did not pay the amounts awarded. Mrs Sanderson now seeks a compliance order to require her former employer to comply with the awards made in the earlier determination.

Respondent's identity

[2] In the earlier proceedings (CEA 143/01), the applicant identified the respondent as *Computa Leta Services Limited*. The respondent did not dispute that and material produced during that investigation¹ supported that as the correct identity of the respondent. In preparing the present statement of problem, the applicant's solicitor discovered that *Computa Leta Services Limited* had been struck off the register of companies in 1990, sometime after the applicant's employment had commenced. A company called *Computa Leta Services (1988) Limited* was incorporated in 1988. It is clear that *Computa Leta Services (1988) Limited* now operates the business previously operated by *Computa Leta Services Limited* and in which Mrs Sanderson was employed. Mr Noel Morrison is shown on records as a director of both companies and the respondent through its advocate has helpfully acknowledged that the correct identity of the respondent is *Computa Leta Services (1988) Limited*.

¹ Recent correspondence on printed letterhead.

[3] Pursuant to clause 4 of the 2nd schedule to the Employment Relations Act 2000 (the Act), I order that the investigation into proceedings CEA 143/01 be reopened. I further order that the respondent in those proceedings and the present proceedings (CEA 43/02) be identified as *Computa Leta Services (1988) Limited*. These orders are made by consent.

Compliance Application

[4] During a directions conference, Counsel and advocate were able to reach agreement regarding a compliance order. By consent and pursuant to section 137 of the Act, I order the respondent to comply with the determination in CEA 143/01 by paying the applicant \$1,000.00 no later than Wednesday 10 April 2002, and \$500.00 every 2 weeks thereafter until a sum totalling \$4,750.00 has been paid to the applicant. As the parties reached agreement, the applicant did not pursue the claim for interest on the unpaid sums.

[5] The applicant also sought an order joining Mr Morrison personally to the proceedings. The basis for the application was Mr Morrison holding out as the employer something that was not a legal entity. Counsel acknowledged that the purpose was to ensure payment. If the respondent now follows the payment schedule as ordered, there will be no further need to consider this aspect. I therefore adjourn this part of the present proceedings. If the applicant wishes to pursue the order, she may do so by giving notice to the respondent, Mr Morrison and the Authority fully setting out the grounds.

[6] The applicant sought a penalty for breach of the Act. The breach alleged is the failure to pay the sums ordered in the earlier determination. The claim overlooks sections 133 (1) (b) and 161 (1) (m) (ii) which make it clear that a person is only liable for a penalty for breaching the Act when the particular provision that is breached provides for a penalty. The Act provides for various consequences if a party does not pay sums awarded in a determination, such as resort to a compliance order or enforcement through the District Court. It does not provide that failure to pay renders a person liable to a penalty. I dismiss the claim for a penalty.

[7] Finally, the parties have not yet been able to agree on the question of costs for this application. Counsel sought costs on a solicitor-client basis. If the applicant wishes to pursue that application, she may file and serve submissions within 14 days and the respondent may file and serve a reply within a further 7 days. However, I urge them to resolve the matter by agreement if possible.

Philip Cheyne
Member of Employment Relations Authority