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Thomson v Arrow Line Marking Limited (Auckland) [2016] NZERA 403; [2016] NZERA Auckland 287 (31 August 2016)

Last Updated: 30 November 2016

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2016] NZERA Auckland 287
5602340

BETWEEN ROSS THOMSON Applicant

A N D ARROW LINE MARKING LIMITED

Respondent

Member of Authority: T G Tetitaha

Representatives: E Burke, Counsel for Applicant

G Rogers, Advocate for Respondent

Investigation Meeting: On papers

Date of Determination: 31 August 2016

DETERMINATION OF THE AUTHORITY

A. Arrow Line Marking Limited is ordered to pay Ross Thomson wages arrears of \$1,221.11.

Employment relationship problem

[1] In an oral determination dated 1 July 2016, Ross Thomson was found to be employed by Arrow Line Marking Limited.¹ Various orders for payment of lost remuneration and compensation were made. A wage arrears claim remained extant. The respondent was directed to file further evidence from his accountant which has now occurred.

Wage arrears

[2] The wage arrears arise from my finding the terms and conditions of employment during the material time was \$925 per week and an additional 25% profit

share for the period 1 July to 8 October 2015.

¹ *Thomson v Arrow Linemarking Ltd* [2016] NZERA Auckland 218.

[3] The evidence is the gross profit for the period 1 July to 8 October 2015 was

\$4,522.65. The net profit for the year ended 31 March 2016 was -\$707.50.

[4] I take the view Mr Thomson's 25 % profit share shall be determined as at the date he was dismissed namely 8 October 2015. This is because he was no longer involved in the company and has no claim to any assets purchased during the year which gave rise to the losses. This totals \$1,130.66.

[5] There is also the issue of holiday pay. The 8% of the 25% profit share of

\$1,130.66 is \$90.45.

[6] Accordingly Arrow Line Marking Limited is ordered to pay Ross Thomson wages arrears of \$1,221.11.

Variation of orders

[7] The applicant appears to seek a variation by email dated 2 August 2015 to the existing orders that “the undisputed amounts be paid to the Applicant within 7 days”.²

The grounds for her application were the amounts ordered remained outstanding after

28 days. More recently she emailed the Authority advising “the applicant has received nothing to date and we have twice sought an order that this undisputed amount be paid within 7 days.”³

[8] If an order does not specify a date for payment it is payable immediately. There is no need for any variation. There are simple cheap and inexpensive enforcement processes available to her client if recovery of the debt is at issue e.g. statutory demand, compliance orders or debt recovery proceedings through the District Court.

[9] This application is dismissed. Each party shall meet their own costs.

T G Tetitaha

Member of the Employment Relations Authority

² Email E Burke to D McLeod dated 2 August 2016.

³ Email E Burke to D McLeod dated 23 August 2016.

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