

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2016] NZERA Auckland 320
5634342**

BETWEEN DOROTHY TUFFEY
Applicant

AND VINKA FARMS LIMITED
Respondent

Member of Authority: Eleanor Robinson
Representatives: Erin Burke, Counsel for Applicant
Helen White, Counsel for Respondents
Investigation Meeting: On the papers
Submissions received: 16 September 2016 from Applicant and from Respondent
Determination: 20 September 2016

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Ms Dorothy Tuffey, seeks an order for compliance, interest and costs in relation to terms of settlement agreed with her employer, Vinka Farms Limited. The agreement reached by the parties was set out in a Consent Memorandum dated 24 August 2015 and incorporated into a Determination of the Authority dated 7 September 2015¹.

[2] Ms Tuffey claims that Vinka Farms Limited complied with the Determination until March 2016 when payments pursuant to clauses 13.5 and 13.6 of the Consent Memorandum ceased as a result of one of the directors of Vinka Farms Limited, Mr Jeffrey Tuffey, refusing to co-sign the cheques which would facilitate payment.

[3] Accordingly Ms Tuffey is seeking that the remedies sought be awarded against both Vinka Farms Limited and Mr Jeffrey Tuffey personally.

Issues

[4] The issues for determination are whether or not:

¹ *Tuffey v Vinka Farms Limited* [2015] NZERA Auckland 270

- Ms Tuffey is now entitled to a Compliance Order in respect of Determination [2015] NZERA Auckland 270
- Such an order should be made against both Vinka Farms Limited and Mr Jeffrey Tuffey.

Note

[5] The parties agreed to the Authority determining this issue based on the Statement of Problem and the Statement in Reply, and on submissions from the parties.

Brief Background Facts

[6] Ms Tuffey has been employed by Vinka Farms Limited as a part-time calf rearer and general farm hand pursuant to an individual employment agreement dated 1 June 2006.

[7] Mr Paul Tuffey is a director of Vinka Farms Limited and manages the farm. Mr Jeffrey Tuffey is also a director of Vinka Farms Limited, but not a manager of the farm. Due to a shareholder disagreement between them, Mr Jeffrey Tuffey refused to co-sign the Vinka Farm Limited cheques to pay Ms Tuffey's wages and holiday pay from July 2011 to the date of the Authority's Determination on 7 September 2015.

[8] Vinka Farms Limited complied with the Authority's Determination dated 7 September 2015 until March 2016 when payments pursuant to clauses 13.5 and 13.6 ceased as a result of Mr Jeffrey Tuffey refusing to co-sign the Vinka Farms Limited cheques to facilitate payment.

The Consent Memorandum

[9] The parties set out the terms of the agreement reached between them in a Consent Memorandum dated 24 August. The terms of settlement included the following clauses:

Clause 13.5 The parties agree that from 31 July 2015, all time records in relation to work performed for the Respondent will be filed by the Applicant on the 15th of each month in relation to worked (sic) performed during the previous calendar month.

Clause 13.6 The parties agree that the Respondent will pay the Applicant the amount specified on the timesheet no later than the last day of the month in which the timesheet is received.

Determination

Compliance Order

[10] The terms of the Consent Memorandum were, by the consent of the parties, made into a Determination of the Authority. Ms Tuffey claims that Vinka Farms Limited has failed to comply with those terms in full. This is not disputed by Vinka Farms Limited.

[11] In the circumstances it is appropriate to order Vinka Farms Limited to comply with the terms of the Consent Memorandum it entered into on 24 August 2015 as incorporated in Determination [2015] NZERA Auckland 270 pursuant to s.137(1)(b) of the Employment Relations Act 2000 (the Act). I order that it do so by 30 September 2016 pursuant to s. 137 (3) of the Act.

[12] For the sake of clarity I confirm that the order of the Authority is that Compliance Order incorporates payment of the total arrears owed to Ms Tuffey, and that the terms of the Consent Memorandum dated 24 August 2015 are adhered to with in regard to future compliance.

Interest

[13] Ms Tuffey has applied for interest on the outstanding sums as set out in the Consent Memorandum.

[14] The Authority has the power to award interest pursuant to clause 11 of the Second Schedule of the Act at the rate prescribed by the Judicature Act 1908, which is currently 5% per annum².

[15] I consider that it is appropriate that Vinka Farms Limited is ordered to pay interest on the outstanding sums owed to Ms Tuffey. I note that these sums include Ms Tuffey's entitlement to statutory payments in respect of holiday pay, in addition to wages.

Should the compliance order be made against both Vinka Farms Limited and Mr Jeffrey Tuffey?

² Judicature (Prescribed Rate of Interest) Order 2011 (SR2011/177)

[16] The parties to determination [2015] NZERA Auckland 270 which incorporates the Consent Memorandum dated 24 August 2015 are Dorothy Tuffey and Vinka Farms Limited. Vinka Farms Limited is a limited liability company and Ms Tuffey's employer.

[17] Whilst the personal and business relationship between Mr Paul Tuffey and Mr Jeffrey Tuffey has apparently broken down, that is not a matter for the Authority in respect of the orders sought by Ms Tuffey.

[18] The power of the Authority to order compliance is set out in s.137 of the Act, which states in s.137(i)(b) that the Authority has the power to order compliance with:

*Any order, determination, direction or requirement made or given
under this Act by the Authority or a member or officer of the Authority*

[19] Significantly Mr Jeffrey Tuffey is not identified as a separate party to determination [2015] NZERA Auckland 270. Accordingly compliance with determination [2015] NZERA Auckland 270 is ordered against Vinka Farms Limited as the Respondent party.

Costs

[20] Costs normally follow the event and Ms Tuffey was the successful party in the matter. The Investigation Meeting in respect of this matter was dealt with "on the papers". It was a relatively straightforward matter, no hearing was required and the matter was decided on the basis of a telephone conference and on written submissions from the parties.

[21] Accordingly Vinka Farms Limited is ordered to pay Ms Tuffey the sum of \$1,000.00 towards her legal costs.

Eleanor Robinson
Member of the Employment Relations Authority