

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 465
5430574

BETWEEN	JASON WANO First Applicant
A N D	KERRI MAREE AHOMIRO Second Applicant
A N D	SHILOH SILVICULTURE LIMITED Respondent

Member of Authority: James Crichton

Representatives: Krystle Wano, for First Applicant
Second Applicant in person
No appearance for Respondent

Investigation Meeting: On the papers

Date of Determination: 9 October 2013

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The first applicant (Mr Wano) seeks compliance with the determination of the Authority dated 23 May 2013 issued as [2013] NZERA Auckland 213. That determination was issued at the behest of the second applicant (Ms Ahomiro) a Labour Inspector employed by the Ministry of Business Innovation and Employment.

[2] In the telephone conference the Authority held with the applicants, the Authority sought to establish why it was necessary for Mr Wano to obtain compliance when Ms Ahomiro had prosecuted the matter as the Labour Inspector.

[3] Ms Ahomiro advised the Authority in the telephone conference that the Ministry's legal section had declined to prosecute the matter further because only one employee was affected.

[4] Accordingly, in order for Mr Wano to obtain the wages that the Authority is satisfied he is owed by the respondent (Shiloh), it is necessary for Mr Wano himself to obtain compliance with the Authority's substantive decision.

Determination

[5] The matter is straightforward. The Authority has already determined that Mr Wano is owed the sum of \$5,666.56 gross being underpaid annual leave, sick leave and public holiday entitlements. That decision was made by the Authority pursuant to its substantive determination issued on 23 May 2013.

[6] The Authority now orders compliance with that decision, the effect of which is that Shiloh Silviculture Limited is required to pay to Jason Wano the sum of \$5,666.56, such payment to be made by Shiloh to Mr Wano within 14 days of the date of this determination.

[7] In making this determination ordering compliance with its earlier decision, the Authority relies on the power so to do in Section 137 (4) of the Employment Relations Act 2000 (the Act). That sub section, amongst other things, allows a person (such as an employee) affected by non compliance with an earlier decision of the Authority, to make application for compliance. Usually, an application for compliance is made by the party prosecuting the original claim. Here, the benefit of that original decision lies with Mr Wano and in the absence of enforcement action by or on behalf of the Labour Inspector, the Authority is satisfied it is just for Mr Wano to have compliance personally.

[8] A Certificate of Determination is to issue recording the Authority's decision to order compliance with its determination issued as [2013] NZERA Auckland 213 requiring Shiloh Silverculture Ltd to pay to Jason Wano the gross sum of \$5,666.56 within 14 days of the date of this determination.

James Crichton
Member of the Employment Relations Authority