

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 279/08
5122677

BETWEEN PETER THOMAS
 WARBURTON
 Applicant

AND LESLIE WILLIAM
 PETHYBRIDGE
 Respondent

Member of Authority: Marija Urlich

Representatives: Applicant, in person
 Respondent, in person

Investigation Meeting: 1 August 2008

Determination: 5 August 2008

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Warburton makes application for a compliance order against Mr Pethybridge. Compliance is sought with a record of settlement entered by the parties on 5 February 2008 pursuant to section 149 Employment Relations Act 2000. The terms of that settlement are confidential to the parties and that confidentiality should be preserved.

[2] Mr Warburton also seeks an award of interest, a penalty and recovery of the filing fee incurred in lodging this application.

[3] Mr Pethybridge did not lodge a statement in reply. The statement of problem and notice of investigation meeting were personally served. He did, however, attend the scheduled investigation meeting. He has been granted the indulgence of providing

evidence to the Authority to enable investigation of this employment relationship problem.

Non-compliance

[4] Mr Pethybridge leases a farm from Katere Lockwood Corporation. Mr Warburton was employed and lived on the farm when Mr Pethybridge took over the lease. Mr Warburton was then employed by Mr Pethybridge for 18 months until his employment ended. The record of settlement arises from the employment relationship.

[5] Mr Pethybridge has not complied with the record of settlement entered with Mr Warburton because, he says, since Mr Warburton vacated the farm premises:

- (i) Mr Warburton's telephone and power bills, totalling \$641.73, remain outstanding;
- (ii) 15 wool packs, valued at \$66.26, are missing;
- (iii) the house had a broken window, replacement cost \$353.25;
- (iv) a 'rug doctor' had to be hired to clean the house because Mr Warburton's dog lived inside;
- (v) a packet of ear tags is missing;
- (vi) a television cord was cut, repair cost \$150; and
- (vii) the estimated cost of grazing Mr Warburton's cattle on the farm during his employment is \$1760.

[6] In reply Mr Warburton says:

- (i) he told Mr Pethybridge to send the power and telephone bills to the Corporation;
- (ii) he has no knowledge of the missing wool packs;
- (iii) the house was inspected by the Secretary of the Corporation and the Corporation has not raised any issues with him about the state of the house;
- (iv) Mr Pethybridge should speak to the farm supervisor about the ear tags;
- (v) he did not cut the television cord; and

(vi) the grazing was free.

[7] Mr Pethybridge said the investigation meeting was the first time these issues had been raised with Mr Warburton. He said he had not reported the missing wool packs to the police, he had not referred the utility bills to the Corporation, he would speak to the supervisor about the ear tags and he would take Mr Warburton's word that he had not cut the telephone cord.

[8] Mr Warburton paid no rent for living in the house on the farm. There was no written tenancy agreement. On the information received I find it is most likely the tenancy remained between the Corporation and Mr Warburton after Mr Pethybridge took on the lease. The tenancy is not a feature of the employment relationship and does not contain any provision relating to the tenancy issues which Mr Pethybridge now seeks to raise.

[9] The missing wool packs, ear tags and grazing may be related to the employment relationship. However, Mr Pethybridge has not established that Mr Warburton has any obligation in relation to those issues.

[10] If Mr Pethybridge had complied with his statutory obligation and filed a statement in reply then Mr Warburton would not have been confronted with these concerns for the first time at the investigation meeting and the parties may have been able to resolve these issues themselves.

Penalty

[11] I have considered the penalty application. Mr Pethybridge has failed to meet the obligations freely entered in the record of settlement without reasonable grounds. However, I accept his concerns are sincerely held and that a penalty is not appropriate.

Interest

[12] The Authority's jurisdiction does not extend to orders for payment of interest on sums for which compliance orders relate¹.

Orders

[13] Leslie William Pethybridge is ordered to comply by 30 August 2008 with clause 7 of the record of settlement entered with Peter Thomas Warburton on 5 February 2008.

Costs

[14] Mr Warburton is entitled to an award of costs to reimburse the \$70 filing fee incurred in lodging this application.

[15] Leslie William Pethybridge is ordered to pay Peter Thomas Warburton \$70.

Marija Urlich

Member of the Employment Relations Authority

¹ *Wolfenden v The NZ Film and Television School Ltd* [1999] 2 ERNZ 21, at p31