

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2012] NZERA Auckland 390  
5390390

BETWEEN                      KERRY HAROLD WOOD  
Applicant

A N D                              EMPIRE CLEANING  
SERVICES LIMITED  
Respondent

Member of Authority:      T G Tetitaha

Representatives:            Applicant in Person  
No appearance by Respondent

Investigation Meeting:     24 October 2012 at Auckland

Date of Determination:    24 October 2012 delivered orally at conclusion of  
investigation meeting; 31 October 2012 delivered in  
writing

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**DETERMINATION OF THE AUTHORITY**

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- A.    An order pursuant to s.131 of the Act that the respondent pay to the applicant the sum of \$7,059.00.**
- B.    An order pursuant to clause 11 Schedule 2 of the Act for interest on the judgment sum set out in paragraph a) at the rate of 5 % per annum calculated from 25 June 2012 until payment.**
- C.    An order pursuant to clause 15 Schedule 2 of the Act for the respondent to pay \$209.56 towards the applicants costs.**

**Employment relationship problem**

[1]    The applicant's employment was terminated by agreement with the respondent on or about 25 June 2012.

[2]    The applicant seeks payment of wage arrears totalling \$7,059.

## Issues

[3] There is a preliminary issue regarding the absence of the respondent at the investigation hearing. The Authority has the power to proceed if a party fails to attend a hearing pursuant to clause 12 of Schedule 2 of the Act:

**12. Power to proceed if any party fails to attend**

*If, without good cause shown, any party to a matter before the Authority fails to attend or be represented, the Authority may act as fully in the matter before it as if that party had duly attended or been represented.*

[4] No good cause has been shown for the failure to attend as the respondent has not contacted the Authority to explain its absence.

[5] The statement of problem was served on the respondent by the Authority on or about 21 August 2012. The applicant then arranged through a private agent to personally serve a director of the respondent, Mr Arnel Prestoza, with the statement of problem on or about 17 September 2012. No statement in reply has been filed by the respondent.

[6] Notice of a teleconference on 2 October 2012 at 10.30am setting down the investigation meeting was served on the respondent on or about 28 September 2012. The respondent failed to attend the teleconference. Attempts to again reach the respondent at its nominated telephone number were unsuccessful.

[7] Notices for the investigation meeting were served on the respondent on or about 3 October 2012. The Authority's support officer attempted to contact the respondent on the morning of hearing to ascertain its whereabouts. The telephone numbers provided are either no longer in service or incorrect.

[8] In view of the above efforts to contact the respondent and its failure to file any document or attend the teleconference and investigation meeting, the Authority is satisfied it may continue to hear this matter today.

[9] The single issue for determination is whether an order pursuant to s.131 of the Employment Relations Act 2000 ("Act") should be made requiring the respondent to pay the applicant the sum of \$7,059.

## **Facts**

[10] The applicant was employed as a business development manager by the respondent cleaning company. His role was to secure contracts for the respondent company and build a sales team nationwide.

[11] The applicant started work on or about 3 May 2012. An employment agreement was signed on or about 14 May 2012.

[12] The employment agreement provided in Schedule 1 the applicant's remuneration. The remuneration was for the initial three months a payment of \$3,000 per month or the greater of the \$3,000 or the commission as below. The commission was 15% of the annualised sales value of the cleaning contracts.

[13] The employment agreement also provided for termination in clause 13.1. The employment was able to be terminated by either party by giving four weeks' notice of termination in writing.

[14] On or about 25 May 2012, by email, the applicant sought to terminate the employment agreement. His finishing date was 25 June 2012.

[15] During the period of his employment, the applicant secured numerous contracts but only two were signed as at 25 June 2012. The annualised sales value of those contracts was \$35,860. A commission of 15% on those contracts would equate to \$5,379.

[16] At the conclusion of his employment, the applicant sought payment of \$1,500 being two weeks' work at the base rate of \$3,000 per month and 15% commission being \$5,379. The total wage arrears the applicant seeks are \$7,059.

[17] The applicant deposed there were various work expenses incurred totalling \$752.55. The applicant does not seek payment of those.

[18] Accordingly the Authority determines on the evidence before it there has been default in payment to the applicant of wage arrears totalling \$7,059 by the respondent.

[19] The Authority further determines the applicant is entitled to interest on the judgment sum from the date of termination being 25 June 2012 until payment of 5%.

## **Costs**

[20] The applicant was self-represented but seeks recovery of the following disbursements:

- Authority Filing fee \$71.56
- Paragon New Zealand fee for personal service upon the respondent \$138.00

[21] The Authority determines the above disbursements are reasonable costs for the applicant to recover and an order for costs shall issue accordingly.

## **Determination**

[22] The following orders are made:

- (a) An order pursuant to s.131 of the Act that the respondent pay to the applicant the sum of \$7,059.00.
- (b) An order pursuant to clause 11 Schedule 2 of the Act for interest on the judgment sum set out in paragraph a) at the rate of 5 % per annum calculated from 25 June 2012 until payment.
- (c) An order pursuant to clause 15 Schedule 2 of the Act for the respondent to pay \$209.56 towards the applicants costs.

Tania Tetitaha  
Member of the Employment Relations Authority