

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Engineering, Printing and Manufacturing Union, Wales Felila,
Mary-Ann Miki, Mose Sioa, Isaia Sioa & Patrick Luisi

AND Borg Industries Ltd

REPRESENTATIVES Simon Adams for Applicants
Terry Daley, Director, for Respondent

MEMBER OF AUTHORITY Y S Oldfield

INVESTIGATION MEETING 23 November 2006

DATE OF DETERMINATION 7 December 2006

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The respondent, Borg Industries, is a manufacturing firm which is struggling to survive after facing a damaging loss of business. On 21 August 2006 the five applicants were laid off without notice. They received neither payment in lieu of notice nor outstanding holiday pay. Two of those five have since been offered some casual work with the respondent but on reduced and uncertain hours. All claim four weeks pay in lieu of notice and two weeks holiday pay¹.

[2] In a further claim, the Engineering, Printing and Manufacturing Union (EPMU) seeks remittance of union fees deducted by the respondent from the wages of union members in its employ, in the sum of \$3,955.20.

[3] Two of the five applicants failed to attend the Authority investigation meeting. Mr Adams told me that one of them, Ms Miki, was unable to get time off her new job. As for the other, Mr Luisi, Mr Adams has recently been unable to make contact with him and is not sure if he is still in Auckland.

[4] I confirm now what I told Mr Adams and Mr Daley at the meeting. This determination will deal with the claims of Mr Mose Sioa and Mr Isaia Sioa, and Mr Wales Felila. The Authority will take no further action in respect of the claims of the other two applicants at this stage. However, in recognition of the fact that the meeting was set down at very short notice I have decided not to dismiss their claims. If they wish the Authority at any time to resume the investigation of their employment relationship problem they should advise accordingly.

[5] Mr Daley, Director of the respondent does not dispute that Mr Felila and Mr Isaia Sioa were not paid their entitlements, although he has questioned whether the amount claimed by Mr Mose Sioa was accurate. Unlike the others, he said, Mr Mose Sioa had holidays this

¹ The respondent's factory closed down at Christmas last year after which the applicants were up to date with their holiday pay. Each claims the two weeks which has accrued in the eight months between the start of this year and the layoffs.

year (a week's paid leave to go overseas plus an additional week's holiday pay.) Mr Mose Sioa confirmed that this was correct.

[6] I am satisfied that both Mr Wales Felila and Mr Isaia Sioa are owed four weeks pay in lieu of notice and two weeks holiday pay. Mr Mose Sioa is owed four weeks pay in lieu of notice but has no holiday pay outstanding.

[7] None of the applicants had received payslips for some time and they were all unable to tell me their gross weekly wage at the time their employment ended. Mr Daley did not bring wage and time records to the investigation meeting but told me he will provide Mr Adams with the relevant information. Leave is reserved (should it prove necessary) for Mr Adams to request a supplementary determination which will set out the precise amount owed. In the meantime, I make the following orders:

- i. Borg Industries Ltd is ordered to pay six weeks wages to Mr Wales Felila;**
- ii. Borg Industries Ltd is ordered to pay six weeks wages to Mr Isaia Sioa;**
- iii. Borg Industries Ltd is ordered to pay four weeks wages to Mr Mose Sioa.**

[8] Mr Daley does not dispute that he owes union fees as claimed. I therefore make a further order as follows:

- i. Borg Industries Ltd is ordered to pay \$3,955.20 union fees to EPMU.**

[9] Mr Daley has stressed that he has been unable, rather than unwilling, to pay what is owed, and will need to consider a staggered payment schedule. Because of the risk that the business might go into liquidation, I opted to proceed straight to an investigation meeting without first sending the parties to mediation. When I met with the parties, however, the business was still trading. I remind them that they have the option of attending mediation now in order to discuss arrangements for payment. Either party may arrange this by contacting the mediation service.

Y S Oldfield
Member of Employment Relations Authority