

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Labour Inspector (Jonathan Denis Henning) (Applicant)

**AND** Hamiltons Cleaning Service Central Otago (2004) Ltd  
(Respondent)

**REPRESENTATIVES** Jon Henning, applicant  
No appearance for respondent

**MEMBER OF AUTHORITY** James Crichton

**INVESTIGATION MEETING** Queenstown 8 March 2007

**DATE OF DETERMINATION** 13 March 2007

DETERMINATION OF THE AUTHORITY

***Employment relationship problem***

[1] The applicant Labour Inspector (Mr Henning) alleges that the respondent Hamiltons Cleaning Service Central Otago (2004) Limited (the employer) has failed to comply with the demand notice served on it pursuant to s.224 of the Employment Relations Act 2000.

[2] The Authority is asked to make a compliance order under s.137 of the Act to enforce the terms of the demand notice.

[3] The demand notice was served on the employer on 19 October 2006 and no objection had been lodged with the Authority within the requisite time in terms of the right so to do under s.225 of the Act.

[4] At the appointed time for the investigation meeting, I convened the meeting and there was no appearance on behalf of the employer. I asked the Authority's senior support officer to contact the employer's Mr Hamilton by telephone which he was able to do.

[5] During the course of a brief telephone call, Mr Hamilton alleged that he had a serious heart problem and was "downtown sorting out his affairs" before going into hospital to have the heart problem dealt with.

[6] I heard the senior support officer identify himself and heard his efforts to obtain a commitment from Mr Hamilton to present himself at the investigation meeting. I am satisfied with the senior support officer's advice to me that he was unable to obtain any such assurance. At the conclusion at what was a very brief exchange, the senior support officer reported that the line went dead.

[7] I am satisfied that the documents pertaining to the investigation meeting were properly served on a representative of the employer and I am also satisfied that the Authority made every reasonable effort to obtain participation of the employer in the investigation meeting. I note for the sake of completeness that the explanation advanced by Mr Hamilton for his non-attendance is one that he has, on occasion, used in the past in his exchanges with Mr Henning.

Even assuming it to be the case that Mr Hamilton has a serious health problem, he had ample opportunity to engage appropriate assistance so that he was represented at the investigation meeting.

[8] Where, as in this case, no objection to the demand notice is lodged with the Authority, then, in terms of s.225(4) of the Act, the demand notice imposes a legal requirement on the employer to comply with it and is *prima facie* evidence that the money now specified in the demand notice is owed by the employer to the employee for whom Mr Henning acts.

### ***Determination***

[9] As I have just indicated, I am satisfied that the demand notice was properly served on the employer on 19 October 2006 and that the employer had the appropriate information available to it in order to decide whether or not to lodge an objection to that demand notice, and that the time for that objection to be lodged has now passed. The employer did not in fact lodge an objection to the demand notice within time and the sum specified in the demand notice, being the sum of \$621.75 gross of holiday pay owed to Maike Piel has not been paid.

[10] As the employer has not exercised its right to object in this particular matter, nor has it met its obligations by paying the sums referred to in the demand notice, nor even been prepared to participate in the Authority's investigation meeting, I direct that the employer is to comply with the demand notice dated 19 October 2006 by paying to the Labour Inspectorate, PO Box 5510, Dunedin, for the attention of Mr Henning the sum of \$621.75 gross. That payment is to be made within 14 days of the date of this determination. Mr Henning is directed to ensure that that payment is made available directly and without deduction to Maike Piel to whom that money belongs.

### ***Costs***

[11] Costs will lie where they fall.

James Crichton  
Member of Employment Relations Authority