

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

Determination Number: WA 3/08  
File Numbers: 5083240  
5088991

BETWEEN      DAVID HINCHCLIFFE-CHEN  
                    (LABOUR INSPECTOR)  
                    Applicant

AND              T.S.V. WHEEL ALIGNMENT AND  
                    SUSPENSIONS LIMITED  
                    Respondent

Member of Authority:      G J Wood

Representatives:          David Hinchcliffe-Chen on his own behalf  
                                    No appearance for or on behalf of Respondent

Investigation Meeting:      16 January 2008 at Palmerston North

Determination:              17 January 2008

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**DETERMINATION OF THE AUTHORITY**

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[1]      As notified by its lawyer, the respondent (TSV) has chosen not to attend or be represented at the investigation meeting, because it does not wish to incur further costs given that “*the company accountant is awaiting negotiations with Inland Revenue to ascertain whether the Department will be winding the company up*”. TSV’s position, as represented through its lawyer, has been consistent on this point throughout the Authority’s involvement. It has never, however, provided any evidence to the Authority, other than the assertions of its lawyer (which I am sure were genuinely given) that TSV has no assets and may be wound up because of debts due to Inland Revenue.

[2]      For these reasons I determined, pursuant to clause 12 of the Second Schedule of the Act, to proceed as if TSV had duly attended or been represented, because no good cause has been shown for it not to do so.

[3]      The Labour Inspector seeks compliance orders in respect of two demand notices served on TSV in respect of two former employees, Mr Lance Collis (5083240) and Mr Jarrat Syme (5088991) for unpaid holiday pay.

[4] Given that no objection was made to the demand notices, the Labour Inspector is entitled to have them enforced by way of compliance order. The Authority has, however, a discretion not to require a compliance order where there is no prospect of that order ever being able to be enforced, for example because a respondent may never be in a position of being able to make any payments owing.

[5] I am unable to conclude that that is the case here, however, because, as noted above, no evidence has been provided by TSV, other than mere assertions through its lawyer, that it is unable to meet any orders made. Furthermore, Mr Hinchcliffe-Chen gave evidence that a TSV principal, Mr David Thornycroft, misled him as to the trading position of the company and did not respond to a number of requests for further information.

[6] I therefore conclude that in all the circumstances it is appropriate to make compliance orders.

[7] I therefore order the respondent, T.S.V. Wheel Alignment and Suspensions Limited, to comply with the labour inspector's demand notices, and accordingly make the following payments within 14 days of the date hereof:

- (a) \$3,373.08 gross to the Department of Labour for the use of Mr Lance Collis (5083240);
- (b) \$5,126.75 to the Department of Labour for the use of Mr Jarrat Syme (5088991); and
- (c) \$150 to the Department of Labour to reimburse it for the two filing fees incurred.

[8] The respondent is formally notified hereby that failure to comply with the Authority's orders will leave it open to the Employment Court to exercise its powers under s.140 to fine it or sequester its property.

**G J Wood**  
**Member of the Employment Relations Authority**