

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 375/08
5127512

BETWEEN	ROBERT MURPHY First Applicant
	DENISE SERGEANT Second Applicant
AND	SMARTSTUD SYSTEMS LIMITED (In Receivership) First Respondent
	TRAFFIC ELECTRONICS LIMITED (In Receivership) Second Respondent

Member of Authority: Alastair Dumbleton

Representatives: First and Second applicants in person
No appearance for respondents

Investigation Meeting: 29 October 2008

Determination: 31 October 2008

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] This is a claim by two employees to recover monies owed to them by their former employer(s) which have been placed in receivership.

[2] Although the first applicant Mr Robert Murphy was employed originally by Traffic Electronics Limited (when it was named Harding Electronic Systems Limited), later his employer became Smartstud Systems Limited. This has been confirmed by Mr Timothy Crabtree, a director of Traffic Electronics Limited and CEO of Smartstud Systems Limited, who wrote a letter dated 17 June 2008 in which he stated that Mr Murphy had been employed by the latter company from 16 November 2006.

[3] The second applicant Ms Denise Sergeant was also employed by Smartstud Systems Ltd.

[4] The purpose of Mr Crabtree's letter was to advise, on a "*to whom it may concern,*" basis that Smartstud Systems Ltd had become unable to meet its contractual obligations to its employees to pay salary, outstanding holiday pay or any other amounts due to them. Mr Crabtree advised that the company was "*now in breach of all [the] employees' contracts.*"

[5] Mr Murphy and Ms Sergeant were sent a letter dated 4 July 2008 by Korda Mentha the receivers of the first and second respondent companies. The letter confirmed that the two companies had been placed into receivership on 23 June 2008.

[6] Korda Mentha in their letter purported to give Mr Murphy and Ms Sergeant notice of termination of their employment, effective from the date of their letter. The receivers advised that any claims the employees might have for outstanding wages, holiday pay or redundancy compensation had to be brought against their former employer(s) rather than the companies' receivers. Korda Mentha advised that claims for outstanding amounts due would be dealt with on a preferential basis to a maximum of \$16,420 and that all other claims would rank as unsecured.

[7] Subsequently, on 8 July 2008, Korda Mentha sent a letter to Mr Murphy and to Ms Sergeant advising the amount of their preferential claims.

[8] Mr Murphy was advised that he was entitled to wages/salary of \$3,013.70 and holiday pay of \$3,702.83, making a total preferential claim to 22 June 2008, the date of receivership, of \$6,716.53. For Ms Sergeant the total amount was \$3,572.88 gross.

[9] On 27 August 2008, Korda Mentha sent Mr Murphy and Ms Sergeant a cheque each drawn on the account of Smartstud Systems Limited (In Receivership) and made out for the nett amount of the preferential claim previously advised. This was offered "*in full and final settlement of your preferential claim.,*" It was stipulated by Korda Mentha that banking the cheque would constitute acceptance of the amount on that basis.

[10] Mr Murphy and Ms Sergeant have claimed in the Authority a further amount, for pay in lieu of notice due under their employment agreements. As the purported termination of their employment was on 4 July 2008, they have claimed pay for the

notice period of one month as their entitlement under an express term of the employment agreement.

[11] The Authority is satisfied that Mr Murphy and Ms Sergeant are due the further amounts claimed by them against the first and second respondents as their former employers.

Determination

[12] The Authority orders the first and second respondent companies to pay to Mr Robert Murphy the following amounts:

- \$4,901.96 – as five weeks' pay from 1 June to 4 July 2008;
- \$4,166.67 – as one month's pay in lieu of notice;
- \$3,702.83 – as annual holiday pay due for leave untaken;

Total \$12,771.46

[13] In the case of Ms Denise Sergeant, the first and second respondent companies are ordered to pay her the following amounts:

- \$4,519.23 – as five weeks' pay from 1 June to 4 July 2008;
- \$4,916.67 – as one month's pay in lieu of notice;
- \$740.01 – as annual holiday pay due for leave untaken;

Total \$10,175.91

[14] Some of the preferential payments offered are included in the total amounts the companies have been ordered to pay by the Authority. If the applicants accept the preferential payments they will need to adjust the above totals downwards accordingly.

[15] The first and second respondent companies are further ordered to pay interest on the above amounts due to the applicants, at the rate of 9% per annum from 4 July 2008 until paid in full.

[16] The first and second respondents are also to pay \$70 to Mr Murphy in reimbursement of the filing fees for this application.

A Dumbleton
Member of the Employment Relations Authority