

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 53/09
5139180

BETWEEN

LABOUR INSPECTOR
Applicant

AND

SOUTHERN TRAIL BIKES
AND HORSE FLOATS
LIMITED
Respondent

Member of Authority: Paul Montgomery
Representatives: Jo-Anne Duff in person
No appearance for Respondent
Investigation Meeting: 17 April 2009 at Invercargill
Determination: 27 April 2009

DETERMINATION OF THE AUTHORITY

[1] This matter involves claims on behalf of three former employees of the respondent. The claimants are Mr Grant Jenkins, Mr Stewart Little and Mr Tony Turner.

[2] On 27 June 2008, the Labour Inspector presented the respondent with claims on behalf of Mr Jenkins in respect of holiday pay and unlawful deductions in the sum of \$975.43. She also presented a claim on behalf of Mr Little in respect of holiday pay in the sum of \$991.44.

[3] The Labour Inspector also requested the time and wages records in respect of Mr Turner. As these had not been supplied to the Inspector at the date of the investigation meeting, an order is sought from the Authority to have them supplied.

[4] On 28 July 2008, the Inspector wrote to Mr Nathan Dempsey, a director of the respondent, offering mediation as a means of resolving the issues. Two days later, she

discussed the Jenkins and Little claims with Mr Dempsey who agreed the matters proceed to mediation. The Inspector was of the view that the records in respect of Mr Turner could be secured in that forum.

[5] By 12 September 2008, both the Mediation Service and the Inspector had made several attempts to contact the directors of the respondent in order to arrange mediation, but were unsuccessful. The matter was lodged with the Authority on 8 October 2008.

[6] The Authority's Support Officer has attempted to secure a statement in reply to the claims but without success. The Authority acknowledges the affidavit of Susan Miller Joyce, process server of Invercargill, confirming that she served Mr Nathan Dempsey with a copy of the application and the booklet *Your Guide to Dealing with the Employment Relations Authority* on 3 December 2008. The affidavit confirms *the defendant acknowledged his identity and accepted service of the documents*. The affidavit is dated 11 December 2008 and was sworn before S Brough, Deputy Registrar of the High Court of New Zealand.

Discussion and analysis

[7] The documents put before the Authority recording the Inspector's assessments in respect of Mr Jenkins and Mr Little are quite clear. The covering letters clearly state the respondent needs to provide further information not already considered that will adequately explain the sum claimed is not due to the complainant.

[8] In spite of indicating a willingness to attend a mediation and to provide a statement in reply in respect of the application to the Authority, the respondent has failed to do either. Mr Dempsey advised the Inspector that the company had some financial difficulties when they conversed on 30 July 2008. That may well be so, however, that does not absolve the respondent of its statutory obligations to former employees nor of its obligations to provide the Authority with a statement in reply setting out its view of the facts. The failures to appear at the investigation meeting and to attend the teleconference on 16 March 2009 are the indicia of a party attempting to evade its lawful obligations.

Determination

[9] The Authority makes the following orders:

- In respect of Mr Jenkins, the respondent is to pay the sum of \$975.43 gross, less the appropriate income tax. The cheque is to be made out to Mr Jenkins and forwarded to the Labour Inspector within 10 working days of this determination's date of issue.
- In respect of Mr Little, the respondent is to pay the sum of \$991.44 gross, less the appropriate income tax. The cheque is to be made out to Mr Little and forwarded to the Labour Inspector within 10 working days of this determination's date of issue.
- The respondent is to surrender to the Labour Inspector the full time and wages records in respect of Mr Turner within 10 working days of the date of issue of this determination.

Costs

[10] I note there is no application for costs. Accordingly, I order costs in relation to this application to lie where they have fallen.

Paul Montgomery
Member of the Employment Relations Authority