

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2011] NZERA Christchurch 124  
5303682

BETWEEN	KERRY N BONIFACE (LABOUR INSPECTOR) Applicant
A N D	CRE DENCE DEVELOPMENT LIMITED (trading as JAPANESE TOURIST CENTRE – JTC) Respondent

Member of Authority: James Crichton

Representatives: Applicant in person  
Paul Wicks, Counsel for Respondent

Submissions Received: 22 November 2010 from Applicant  
27 January 2011 from Respondent

Date of Determination: 22 August 2011

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**FURTHER DETERMINATION OF THE AUTHORITY**

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**Introduction**

[1] In the substantive determination which issued on 20 October 2010, the Authority deferred questions of penalty for subsequent consideration on the basis that, if the underlying arrears of wages were paid in terms of the original determination, then no penalty would be imposed. Conversely, if there was a failure by the respondent to meet its obligations in terms of the substantive determination, then leave was reserved for the Labour Inspector to make further application to the Authority for the imposition of penalties.

[2] By letter dated 22 November 2010, the Labour Inspector advised that no payment had been received from the respondent (JTC) and accordingly penalties were sought. In addition, the Labour Inspector sought the imposition of costs.

[3] As to that last matter, the Authority in its substantive determination at para.[18] has already disposed of the question of costs and no further submission in

that regard is warranted. The claim for penalties remains, however, and is absolutely consistent with the terms of the original determination.

[4] In submissions filed on JTC's behalf by its counsel, the Authority is urged not to impose penalties and to accept the evidence contained in the affidavit filed in support which is to the effect that JTC are in financial difficulty and that their failure to meet their obligations as determined by the Authority, was, as the Authority itself concluded, a function of "ignorance and language deficits".

### **Discussion**

[5] The essence of the argument advanced by the Labour Inspector is that penalties ought to now be imposed because of JTC's failure to meet its obligations in terms of the original determination. Conversely, JTC say that their failure to meet the obligations imposed on them by the substantive determination is a consequence of the company's parlous financial position and the imposition of penalties would further exacerbate that situation and make it more rather than less likely that JTC could not honour its obligations to the affected employee.

[6] Further, as a subset of the general discussion, the Labour Inspector advances the view that the Authority's conclusion in the substantive determination that JTC's actions were caused by language deficits and ignorance, rather than wilful wrongdoing, are mistaken and that the better view is that JTC simply set out on a deliberate course of behaviour to disadvantage the employee.

[7] Having already dealt with that issue in the substantive determination, it is not appropriate for the Authority to revisit that matter. The conclusions reached by the Authority in the substantive determination, based on the evidence that the Authority heard, must stand and the only question for determination now is whether by reason of the continuing fault of JTC, penalties ought to now be imposed.

### **Determination**

[8] I conclude that, based on the evidence filed by affidavit on behalf of JTC, the appropriate course of action is for the employer to be given a further opportunity to meet its obligations, but that further obligation will not be open ended. Leave is still reserved for the Labour Inspector to revert to the Authority for penalties to be again considered.

[9] I direct that JTC is to have a further three month period from the date of this determination to arrange its affairs such that the moneys due and owing to the employee concerned in this matter are paid in full; if that goal is achieved within the period I have set, then no penalties will apply. Conversely, if the obligation remains unsatisfied after three months have elapsed from the date of this determination, then I would expect the Labour Inspector to make further application to the Authority and at that point, it is unlikely that the Authority would be discouraged from imposing penalties for each and every breach.

**James Crichton**  
**Member of the Employment Relations Authority**