

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2011] NZERA Wellington 127
5345797

BETWEEN THE NEW ZEALAND HOUSE
INSPECTION CO
(WELLINGTON) LTD
Applicant

AND NICOLA LOUISE HAPE
MEDWAY, LABOUR
INSPECTOR OF THE
DEPARTMENT OF LABOUR
Respondent

Member of Authority: P R Stapp

Representatives: Gary Koornneef for the Applicant
Alex Leulu Counsel for Respondent

Investigation Meeting: On the papers and by telephone conference 19 August
2011 at Wellington

Submissions/information received: 12 August 2011 from Applicant
17 August 2011 from Respondent

Determination: 19 August 2011

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This is an application for arrears and holiday pay and interest to be paid by instalments. The Respondent has opposed the payment by instalments because from the accounts provided there are sufficient assets to meet the outstanding amounts determined by the Authority in a determination dated 22 July 2011 [2011] NZERA Wellington 123.

Issues

[2] Does the financial position of the employer require an order for payment of the wages and other money to the employees by instalment?

The facts

[3] The Authority reserved leave on instalments in the determination [2011] NZERA Wellington 123. Since that determination the applicant has provided a draft set of accounts from its accountant. These purport that there was a nett loss for the financial year ended 31 March 2011. An Inspection Income Summary dated 1 April 2009 to 31 March 2011 purports a significant decrease in revenue from the previous year with employees under contract and fewer employees.

Determination

[4] My determination of this matter has been as a result of the telephone conference held on 19 August 2011 and the papers lodged by the parties. Both parties had an opportunity to comment and it was agreed that not much more would be advanced at the investigation meeting. I therefore vacated the investigation meeting date and it was agreed that I proceed on the basis of the information before me.

[5] I am not satisfied that the financial position of the employer requires an order for payment of the wages and other money to the employees by instalment. At least at this stage. This is because the accounts are only draft accounts. There is no explanation on priorities for expenses and income. I have been informed that the applicant has always been able to meet its obligations for PAYE and Kiwi Saver with IRD. Also, it has been suggested by the applicant's accountant that decreases in sales and with it profitability has made it difficult and unreasonable to expect that any sizable payment on the amounts could be made. There has been no full and detailed explanation about this information. The accountant did not provide an affidavit on the details and considered it was not necessary at this stage, but the accountant says he would assist the applicant once formal accountants were completed. There has been no suggestion made on any reasonable instalment plan.

[6] I decline the application for an instalment plan for payment.

Orders of the Authority

[7] I confirm the orders for payment to be made as follows from the original determination.

[8] The New Zealand House Inspection Co (Wellington) Limited is ordered to pay the Labour Inspector at the Department of Labour:

- a) \$5,307.19 gross holiday pay arrears (for the use of Barry Marsh)
- b) \$5,385.69 gross holiday pay arrears (for the use of Brian Marsh)
- c) \$80.70 gross interest calculated at 5% (for the use of Barry Marsh)
- d) \$81.89 gross interest calculated at 5% (for the use of Brian Marsh)

[9] I vary the date for payment (originally 26 August 2011) to 2 September 2011 to enable the applicant to make the necessary arrangements for payment.

[10] Leave remains in place for any variation on additional sums of interest.

[11] Costs lie where they fall.

P R Stapp
Member of the Employment Relations Authority