

[2] On 24th September 2010, the Labour Inspector wrote to Mr Jenkins, Director, Radiator Repair Services Limited, requesting payment of \$11,420.52 for the use of Mr Brimmer and for \$70.00 to be paid to the Department of Labour; the sums to be paid by 21st October 2010.

[3] On 27th October 2010, the Labour Inspector spoke to Mr Jenkins via a telephone call. Mr Jenkins advised that the company had debts of \$200,000 and had ceased trading. Mr Jenkins apparently made it clear that the company was financially not able to comply with the orders of the Authority. The Authority is also aware of the situation, having spoken to Mr Jenkins via a conference call, prior to the substantive determination being issued. I recall that Mr Jenkins was most candid about the circumstances and the inability of the company to make payments to its creditors.

[4] On 9th March 2011, the Authority received an application for a compliance order pursuant to section 137 of the Employment Relations Act 2000.

[5] I am satisfied that Radiator Repair Services Limited has received a copy of the current application for compliance; to which there has been no response.

[6] The current records of the Companies Office show that:

The Registrar of Companies is satisfied that this company [Radiator Repairs Services Limited] has ceased to carry on business and has initiated action to remove the company from the register. Public notice has been given and the objection has lapsed. The Registrar will continue with the removal process.

The Authority understands that the Labour Inspector has lodged an objection to the removal of the company from the Companies Office register.²

Compliance Order

[7] I am satisfied that Radiator Repair Services Limited has not complied with the orders of the Authority made in the determination dated 23rd September 2010, on the apparent grounds that the company has no funds to meet its financial obligations. It appears to be most probable that this is so, albeit there are no financial records of the

² As indicated in an email dated 26th November 2010 from the Labour Inspector to the Authority.

company before the Authority. However, there is an email from the company's accountant dated 20th December 2010. It informs that:

The Company ceased trading a considerable time ago, and is insolvent owing substantial amounts to the Inland Revenue Dept. This has been notified to your department at earlier times. It is likely that the Companies Office will apply to strike the company off the register for not filing an annual return, but the Inland Revenue may wish to place the company into liquidation.

[8] While one has to be cognisant of the information received from the company's accountant, there is no other tangible evidence before the Authority as to the inability of the company to comply with the orders made. However, I cannot help but express that I have good reason to believe that a compliance order will most probably be incapable of being enforced. Indeed, the energies and resources of all of the parties involved in this matter (including the Authority) most probably could be expended in more productive areas. Nonetheless, given that I am satisfied that the orders of the Authority have not been complied with, and in the absence of any probative evidence pointing to a contrary course of action, the Authority is obliged to discharge its duties and make the order sought.

Compliance Order

[9] Pursuant to section 137 of the Employment Relations Act 2000, Radiator Repair Specialists Limited is ordered to comply with the orders of the Authority dated 23rd September 2010, as follows:

- (a) Radiator Repair Services Limited is ordered to pay to the Labour Inspector, for the use of Mr Hugh Brimmer, unpaid holiday pay pursuant to the Holidays Act 2003, of the gross sum of \$11,420.52. Interest is to be paid on this sum at the rate of 5% per annum from 20th January 2009 until payment is made.
- (b) Pursuant to clause 15 of Schedule 2 to the Employment Relations Act 2000, Radiator Repair Services Limited is ordered to pay to the Labour Inspector the sum of \$70.00 being the application fee paid to the Authority.

The above sums must be paid within 28 days from the date of this determination.

Costs: Radiator Repair Specialists Limited is ordered to pay to the Labour Inspector (within 28 days of the date of this determination) the sum of \$71.56 being the filing fee paid to the Employment Relations Authority for this application.

K J Anderson
Member of the Employment Relations Authority