

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 293
5338039

BETWEEN

CHRISTINE MCLEAN,
LABOUR INSPECTOR
Applicant

AND

ALAN & KAREN PAVICH,
IN PARTNERSHIP
Respondent

Member of Authority: Robin Arthur

Representatives: Applicant in person
No appearance for Respondent

Investigation Meeting: 7 July 2011 by telephone conference

Determination: 7 July 2011

DETERMINATION OF THE AUTHORITY

- A. Under s137 of the Employment Relations Act 2000 Alan and Karen Pavich are ordered to comply, within 14 days of the date of this determination, with the orders made by determination of the Authority on 21 January 2011 to pay to the Labour Inspector:**
- (i) the specified sums of holiday pay and interest (for the benefit of their former employee Kio Millar); and**
 - (ii) \$70 in reimbursement of the application fee; and**
 - (iii) \$5000 in penalties for breach of statutory obligations (for transfer to the Crown Account).**
- B. Alan and Karen Pavich must also pay the Labour Inspector a further \$71.56 in reimbursement of the fee paid to lodge the application for a compliance order.**

[1] Alan and Karen Pavich did not respond to a statement of problem lodged by the Labour Inspector seeking a compliance order in respect of orders made in an Authority determination issued on 21 January 2011.¹

[2] Courier records confirmed the statement of problem was served on 19 March 2011 at the address provided for the Pavichs.

[3] The Authority determination showed Mr and Mrs Pavich had not participated in the earlier investigation after Mrs Pavich attended a case management conference by telephone on 14 September 2010. Contact was made by telephone and email in November 2010 but neither Mr or Mrs Pavich nor any representative for them attended the investigation meeting in Hamilton on 23 November 2010.

[4] In light of this I proposed dealing with the Inspector's compliance order application 'on the papers' but with an opportunity for the parties to be heard by telephone conference. For that purpose a Notice of Investigation Meeting was issued along with a Minute explaining the proposed procedure.

[5] The minute advised that if Mr and Mrs Pavich wished to be heard at the notified time and date they would need to provide a telephone number at which they could be contacted. If they did not provide those contact details, or did so and then did not attend by telephone, the Authority could proceed to issue the orders sought by the Inspector without hearing from them.

[6] The minute also advised that Mr and Mr Pavich could object to the proposed procedure within 14 days. If they did so a case management conference by telephone would be convened to consider any information or submissions they wish to make on how this matter should be dealt with.

[7] The notice and minute were sent by track and trace courier records to a residential address for Mr and Mrs Pavich and to an email address through which Mrs Pavich had communicated with the Authority in September 2010. Courier records show the notice and minute were delivered to that address and signed for on 25 May

¹ [2011] NZERA Auckland 31.

2011. The Authority has received no response or other communication from Mr or Mrs Pavich since that date.

[8] As Mr and Mrs Pavich had not objected to the proposed procedure for determining the compliance order application and had not taken the opportunity to provide a number at which a representative could be contacted to participate in the investigation number by telephone, I proceeded to hear from the Inspector by telephone at the notified time and date and determine the matter as permitted under clause 12 of Schedule 2 of the Employment Relations Act 2000 (the Act).

[9] I was satisfied on the Inspector's affirmed evidence that Mr and Mrs Pavich had not paid the amounts ordered in the Authority's earlier determination and a compliance order should be made. The terms of the order now made are set out at the head of this determination.

[10] In an email to the Inspector dated 18 February 2010 Mrs Pavich had stated Mr Millar was employed by her and Mr Pavich through their share-milking partnership. As business partners Mr and Mrs Pavich are jointly and severally liable for the amounts now due to the Inspector.²

[11] I note that should Mr and Mrs Pavich not comply with the orders made in this determination the Inspector may seek to enforce those orders through the District Court,³ or apply in the Employment Court for further orders. The Employment Court has powers to order a prison term of up to three months, a fine of up to \$40,000 or sequester the property of the person or persons in default.⁴

Robin Arthur
Member of the Employment Relations Authority

² Sections 13 and 15 of the Partnership Act 1908.

³ Section 141 of the Employment Relations Act 2000 (the Act).

⁴ Sections 138(6) and 140(6) of the Act.