

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2012] NZERA Wellington 78
5363284

BETWEEN NICOLA LOUISE HAPE
 MEDWAY, LABOUR
 INSPECTOR OF THE
 MINISTRY OF BUSINESS
 INNOVATION AND
 EMPLOYMENT (FORMERLY
 THE DEPARTMENT OF
 LABOUR)
 Applicant

A N D THE NEW ZEALAND HOUSE
 INSPECTION CO
 (WELLINGTON) LIMITED
 Respondent

Member of Authority: P R Stapp

Representatives: Nicola Medway acting alone
 Mr Gary Koornneef, for Respondent

Investigation Meeting: 4 July 2012 at Wellington

Date of Determination: 13 July 2012

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] This is an employment relationship problem related to the respondent failing to pay amounts to the inspector at the Ministry for the use of Barry Marsh and Brian Marsh as determined by the Authority in a determination dated 22 July 2011 and 19 August 2011, supported by a certificate of determination dated 13 September 2011. The sums of money that the Authority ordered to be paid are:

- a. \$5,385.69 gross holiday pay arrears (for the use of Brian Marsh);

- b. \$5,307.19 gross holiday pay arrears (for the use of Barry Marsh);
- c. \$81.89 gross interest calculated at 5% (for the use of Brian Marsh) for the period 1 April 2011 to 20 July 2011.
- d. \$80.70 gross interest calculated at 5% (for the use of Barry Marsh) for the period 1 April 2011 to 20 July 2011;

[2] The Authority provided leave (which was reserved) for a variation on any additional sums of interest to be calculated up until the date of payment. The applicant has made a calculation for further and additional interest payments for the sums to be paid to Barry Marsh and Brian Marsh. The respondent has not made any payment but does not deny that money is owed in regard to the matter.

Issues

[3] The issue in this matter is whether or not a compliance order should be made and the time that the Authority should provide to the respondent to make a payment.

The facts

[4] It is common ground that the respondent, the New Zealand House Inspection Co (Wellington) Limited has not paid the sums ordered by the Authority. Mr Koornneef director of the company has made the following explanations:

- a. That allegedly property has been seized and held by the Marshes until compliance has been achieved;
- b. That the Marshes and his ex-wife have allegedly been involved in the removal of personal property owned by Mr Koornneef and being used as leverage until the payments have been made;
- c. That a hearing is scheduled for 17 August 2012 in the Family Court involving Mr Koornneef in regard to property;
- d. That Mr Koornneef does not deny that the amounts of wages are owing, but he says he is struggling financially week by week and that the company is not in any position to make payments of the full amounts that have been ordered by the Authority;

- e. That he has spoken to the Police and any further involvement of the Police will be subject to an outcome in the Family Court proceedings;
- f. That although the company is unable to pay the full amounts, Mr Koornneef accepts that once his personal affairs and separate matters with the Marshes are sorted, he may be able to arrange for payment with the use of his property;
- g. That he is still open to discussions through mediation in an attempt to try and arrange instalments and settlements with the Ministry of Business Innovation and Employment (formerly Department of Labour).

Authority's comments

[5] First, this has nothing to do directly with the Marshes and any issues between them and Mr Koornneef, Mr Koornneef's ex-wife and in regard to Mr Koornneef's property. Any issues associated with his ex-wife will be the subject of a hearing in another court. Any repossession of his property may be linked to him making arrangements for the company to pay sometime in the future. However the immediate issue is about the company needing to pay the Labour Inspector in regard to the claims on behalf of the Marshes.

[6] Second, Ms Medway accepts that the company would appear to be having some difficulties, but Mr Koornneef has not provided detailed information in regard to whether or not there is an inability for the company to meet its obligations in the future. This is a matter that relates to the obligation by the company to pay the holiday pay that is a statutory requirement. Ms Medway opposed any further mediation because of the following:

- a. That there is nothing to mediate because of the statutory amounts due and that a mediator would not be able to engage in the negotiation of any lesser payments than the amounts the company is obliged and obligated to pay;
- b. That there has been no initiative made by the company to endeavour to get an outcome without having a compliance order.

- c. That the matters in regard to property between the Marshes and Mr Koornneef are entirely separate matters to this action brought before the Authority by the Labour Inspector and the Ministry of Business Innovation and Employment. Ms Medway submitted that these should not cloud the real issue when the company has an obligation to pay.

[7] Two points arise from this information. First there is evidence that the company although currently in financial difficulties may be in a position in the future to pay the money owed and that Mr Koornneef may be able to make arrangements for such payment having regard to arrangements relating to property.

[8] Second the current situation means that the matter has no features that would enable mediation to contribute constructively to resolve the problem.

Compliance

[9] I have not been satisfied from the information that has been placed before me to make an order for instalments. No arrangements have even been suggested and/or promoted by the company.

[10] Although Mr Koornneef says that the company is not in a position to pay at present based on his bank statements, financial documents and IRD information these if they are produced may support the current position that the company simply cannot pay immediately.

[11] Mr Koornneef says that any ability for the company to pay will be based on his ability to get back the property he alleges has been seized. He accepted that the company may be able to pay some time in the future and that he has every intention to meet his obligations where he can and is able to make arrangements for the company to pay.

[12] Ms Medway drew my attention to the request for a compliance order for payments to be made within seven (7) days, and submitted that she accepted that this would be unfair and was prepared to leave it to the Authority to set an appropriate timeframe for compliance to be met.

[13] I am satisfied that this is a matter for a compliance order based on the failure of the company to pay the sums ordered by the Authority and supported by a

certificate of determination. It is common ground that the payments have not been made and it is accepted by Mr Koornneef that the company owes the amounts.

[14] Although the inspector provided revised calculations on the interest I have dealt with the matter as contained in the original orders. I am satisfied that the calculations at the time were correct and I have added further interest from 21 July 2011 as was permitted by the Authority's determination because no payments have been made, allowance for interest to be added was given and leave granted for further calculations on interest to be made until the date of any payment.

[15] I have set a date for compliance based on Mr Koornneef's court fixture that gives him time and makes allowance for an ability to pay to be arranged because of his financial affairs. He is being generously treated here and the Ministry's acknowledgement of the possible financial difficulties means more time than just 7 days needs to be provided.

[16] Therefore, I order New Zealand House Inspection Company (Wellington) Limited to comply with the Authority's orders and pay Nicola Medway Labour Inspector of the Ministry of Business Innovation and Employment the following payments:

- a. \$5,385.69 gross (in respect of Brian Marsh);
- b. \$5,307.19 gross (in respect of Barry Marsh);
- c. \$81.89 interest as ordered for the period 1 April 2011 to 20 July 2011 (for the use of Brian Marsh);
- d. \$80.70 interest as ordered for the period 1 April 2011 to 20 July 2011 (for the use of Barry Marsh);
- e. \$259 interest for the period 21 July 2011 to 4 July 2012 (for Brian Marsh);
- f. \$255.50 interest for the period 21 July 2011 to 4 July 2012 (for Barry Marsh).

[17] New Zealand House Inspection Company (Wellington) Limited is required to comply with the order by 4.30pm on 20 August 2012.

[18] The Authority's order for additional interest to be paid on the amounts owing remains in effect for the period until the amounts are paid.

[19] There is no issue as to costs since the inspector is acting in the matter on her own for the Ministry. Costs usually follow the event. The priority of the Ministry is to obtain the statutory sums of holiday pay owing from New Zealand House Inspection Company (Wellington) Limited. I take it from this that the Ministry is prepared to waive an order on costs and in particular the filing fee. In that regard I am agreeable to not making any order for costs, but if an issue arises I reserve leave for the parties to return to the Authority if necessary.

P R Stapp
Member of the Employment Relations Authority