

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2019] NZERA 422
3055558

BETWEEN JESSE WILLIAM PAUL
 Applicant

AND B J RAKENA BUILDERS LIMITED
 First Respondent

 BARRY JON RAKENA
 Second Respondent

Member of Authority: Helen Doyle

Representatives: Jesse Paul in person
 No appearance by the first or second respondents

Investigation Meeting: 16 July 2019 at Christchurch

Determination: 17 July 2019

DETERMINATION OF THE AUTHORITY

- A I order that B J Rakena Builders Limited comply with the first and third order made in the determination of the Authority [2019] NZERA 233.**
- B Within 14 days of the date of this determination B J Rakena Builders Limited is to pay to Jesse William Paul the sum of \$16,484.15 gross being holiday pay and \$71.56 being reimbursement of the filing fee.**
- B Leave is reserved for Jesse William Paul to return to the Authority in the event of default by B J Rakena Builders Limited to seek leave to recover the money owing from its sole director Barry Jon Rakena under s142Y of the Employment Relations Act 2000.**

Employment Relationship Problem

[1] Jesse Paul seeks compliance with a determination of the Employment Relations Authority dated 17 April 2019.¹

[2] The Authority made orders in the determination that B J Rakena Builders Limited, pay to Mr Paul the sum of \$16,484.15 gross owing to him for holiday pay and reimburse him for his filing fee of \$71.56.²

[3] There was also an order made that Barry Rakena must pay Mr Paul any balance of the total amount outstanding as soon as possible after 31 May 2019.

[4] The determination provided that Mr Paul may return to the Authority for an order that the respondents comply with this determination if they do not do so.

The Investigation Meeting

[5] At the Authority investigation meeting there was no appearance on behalf of B J Rakena Builders Limited (the company) and no appearance by Barry Rakena. I am satisfied that a notice of investigation meeting and notice of direction was served on the company and Mr Rakena at the registered office of the company which is also Mr Rakena's address. Confirmation that service took place on 26 June 2019 was received from a service agency.

[6] There was no reason advanced for the failure to appear by the company and Mr Rakena at the investigation meeting. Under clause 12 of the second schedule to the Employment Relations Act 2000 (the Act) I proceeded to heard evidence from Mr Paul.

Non-compliance with the Authority determination

[7] Mr Paul confirmed in his evidence that he had not received any payment from the company or Mr Rakena for holiday pay owed to him of \$16,484.15 gross and the filing fee.

[8] I accept his evidence that there has been a failure to comply with the first and third orders of the determination of the Authority dated 17 April 2019 and that it is appropriate to order compliance by the company under s 137(1)(b) of the Act.

¹ [2019] NZERA 233

² First and third orders

[9] It was suggested in the determination that Mr Rakena, who is the sole director of the company, had agreed to some personal liability for the holiday pay. He was joined to the proceedings following a telephone conference with the Authority before the matter was determined. The company employed Mr Paul. I am not prepared to order compliance by Mr Rakena personally for payment of the holiday pay. I consider the appropriate approach is to reserve leave for Mr Paul to return to the Authority under s142Y of the Employment Relations Act 2000 (the Act) if the company defaults and does not make payment within the time ordered for compliance. Section 142Y provides for circumstances where an employee may recover wages or other money payable from a person who is not the employee's employer.

Orders made

[10] I order that B J Rakena Builders Limited comply with the first and third order in the determination of the Authority and within 14 days of the date of this determination pay to Jesse Paul the sum of \$16,484.15 gross being holiday pay and \$71.56 being reimbursement of the filing fee.

[11] Leave is reserved for Jesse William Paul to return to the Authority, in the event that there is a default by B J Rakena Builders Limited, to seek leave to recover the money owing from its sole director Barry Jon Rakena under s142Y of the Employment Relations Act 2000.

Helen Doyle
Member of the Employment Relations Authority