

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2020] NZERA 328
3083272

BETWEEN	PETER JAMES ADAMS Applicant
AND	HEAVY TRANSPORT SERVICES CANTERBURY LIMITED (in liquidation) First Respondent
AND	MICHAEL EDWARD RADLEY Second Respondent

Member of Authority: Geoff O'Sullivan

Representatives: Rachel Elizabeth Walsh, counsel for the Applicant
Michael Edward Radley for the first and second
Respondents

Investigation Meeting: On the papers

Submissions [and further
Information] Received: 6 July 2020 from the Applicant
6 July 2020 from the Respondent

Date of Determination: 20 August 2020

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On 25 October 2019 the Authority determined (3053892) that the first respondent Heavy Transport Services Canterbury Limited (HTSCL) was to pay Peter James Adams the following:

- (a) arrears of wages \$46,550;
- (b) holiday pay of \$7,200;

- (c) the employer's contribution towards Kiwi Saver of three percent totalling \$1,984.50 plus damages for hurt and humiliation and a contribution towards costs.

[2] HTSCL has not made any payment pursuant to the above determination and is now in liquidation. The second respondent Michael Radley is the sole shareholder and director of HTSCL. Mr Adams contends that Mr Radley aided and abetted the breaches of the employment standards by HTSCL, pursuant to s 142Z(3) of the Employment Relations Act 2000 (the Act) and was a person involved in the breach within the meaning of s 142W(1)(a) – (c) inclusive of the Act, in that he as sole director aided and abetted HTSCL to induce the breach and has been directly and indirectly knowingly concerned in or has been a party to the breach.

[3] In its determination the Authority granted Mr Adams leave to proceed under s 142Y of the Act to seek to recover minimum entitlements from Mr Radley.¹ This follows HTSCL being placed into liquidation by order of the High Court on 14 May 2020.

[4] Mr Radley defends the claim simply on the basis first, HTSCL had no funds to pay the applicant. Secondly, Mr Radley's personal situation including illness and debt means simply his financial situation precludes payment. He states he has not been in paid employment since December 2019. The parties have agreed that the Authority would deal with this matter on the papers. Both sides filed evidence and submissions.

[5] As permitted by s 174E of the Act this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

The Claim

[6] As indicated above, Mr Adams is currently owed the following minimum entitlements by HTSCL:

- (a) arrears of wages of \$46,550;
- (b) holiday pay of \$7,200; and
- (c) the employer's contributions towards his Kiwisaver totalling \$1,984.50.

¹ [2020] NZERA 87

[7] The failure to make these payments comprises a breach of the minimum employment standards.

The Issues

[8] There is no argument that the moneys are not due and payable to Mr Adams by virtue of the Authority determination. It is not disputed that the arrears are due to a breach of employment standards nor is there any real argument that Mr Radley is not a person involved within the meaning s 142W of the Act.

[9] Section 142Y of the Act provides circumstances where an employee such as Mr Adams can recover from a person who is not the employer, any wages or other money payable to the employee. Three requirements need to be met:

- (a) First there has been a default in the payment of wages or other money payable to the employee.²
- (b) The second is that the default is due to a breach of employment standards.³
- (c) The third requires that the person is a person involved in the breach within the meaning of s 142W of the Act.⁴

[10] Mr Radley was the sole director and shareholder of the first respondent accordingly it is clear he is a person involved in the breach.

Orders

[11] Taking into account the above I make the following orders:

- (a) Mr Radley is to pay arrears of wages of \$46,550 to Mr Adams;
- (b) Mr Radley is to pay holiday pay of \$7,200 to Mr Adams;
- (c) Mr Radley is to pay a sum of \$1,984.50 being a three percent contribution towards Kiwisaver to Mr Adams;
- (d) The above payments are to be made within seven days.

² Section 142Y(1)(a) of the Employment Relations Act 2000.

³ Section 142Y(1)(b) of the Employment Relations Act 2000.

⁴ Section 142Y(1)(c) of the Employment Relations Act 2000.

[12] To be clear, the above payments do not extinguish the liability of HTSCL in respect of other monies owing to Mr Adams including costs and damages for hurt and humiliation due under the original determination.

Costs

[13] Costs are reserved.

Geoff O'Sullivan
Member of the Employment Relations Authority