

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2020] NZERA 87
3083272

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

Member of Authority: Geoff O’Sullivan

Representatives: Rachel Walsh, counsel for the Applicant
Michael Edward Radley for and on behalf of the
Respondents

Investigation Meeting: On the papers

Date of Determination: 26 February 2020

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] In a substantive determination of the Authority, *Peter James Adams and Heavy Transport Services Canterbury Limited*¹, Peter Adams was successful in his claim against Heavy Transport Services Canterbury Limited. (Heavy Transport).

[2] To date Heavy Transport has not paid any of the remedies ordered by the Authority.

¹ [2019] ERA 611

[3] Mr Adams seeks leave under s 142Y of the Employment Relations Act 2000 (the Act) to join Michael Edward Radley (Mr Radley) to the proceedings. This is on the basis he is a person involved in the breach and that he has aided, abetted, counselled or procured the breach by Heavy Transport. Mr Radley is the sole director of Heavy Transport.

[4] Peter Adams wishes to enforce parts of the Determination against Mr Radley personally.

[5] The application has been served on both Heavy Transport and Mr Radley. The Authority held a case management telephone conference call on 14 January 2020 wherein Mr Radley advised that he had been served with the application on 23 December 2019.

[6] Mr Radley agreed during this telephone conference that if he did not lodge a statement in reply and if Heavy Transport did not file a statement in reply, then the Authority would deal with the application for leave under s 142Y of the Act, on the papers.

Should Peter Adams be granted leave under s 142Y of the Act?

[7] Mr Adams brings the action in his own right as an employee of Heavy Transport. There is no dispute that he was an employee of the company.

[8] The relevant provisions of the Act are set out below. Section 142Y of the Act provides:

142Y When person involved in breach liable for default in payment of wages or other money due to employee

- (1) A Labour Inspector or an employee may recover from a person who is not the employee's employer any wages or other money payable to the employee if—
 - (a) there has been a default in the payment of wages or other money payable to the employee; and
 - (b) the default is due to a breach of employment standards; and
 - (c) the person is a person involved in the breach within the meaning of section 142W.
- (2) However, arrears in wages or other money may be recovered under subsection (1) only,—
 - (a) in the case of recovery by an employee, with the prior leave of the Authority or the court; and
 - (b) to the extent that the employee's employer is unable to pay the arrears in wages or other money.

[9] Employment standards are defined in s 5 of the Act as:

employment standards means any of the following:

- (a) the requirements of any of sections 64, 69Y, 69ZD, 69ZE, and 130;
- (b) the provisions of the Equal Pay Act 1972;
- (c) the minimum entitlements and payment for those under the Holidays Act 2003;
- (d) the requirements of sections 81 and 82 of the Holidays Act 2003;
- (e) the minimum entitlements under the Minimum Wage Act 1983;
- (f) the provisions of the Wages Protection Act 1983

[10] Section 142W of the Act defines involvement in breaches as:

142W Involvement in breaches

- (1) In this Act, a person is involved in a breach if the breach is a breach of employment standards and the person—
 - (a) has aided, abetted, counselled, or procured the breach; or
 - (b) has induced, whether by threats or promises or otherwise, the breach; or
 - (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the breach; or
 - (d) has conspired with others to effect the breach.
- (2) However, if the breach is a breach by an entity such as a company, partnership, limited partnership, or sole trader, a person who occupies a position in the entity may be treated as a person involved in the breach only if that person is an officer of the entity.
- (3) For the purposes of subsection (2), the following persons are to be treated as officers of an entity:
 - (a) a person occupying the position of a director of a company if the entity is a company:

...

[11] The Court of Appeal observed in *Brill v Labour Inspector*² the practical effect of granting leave was to join another party to existing proceedings. The Court of Appeal went on to find that once a Labour Inspector, the applicant in that case, had established on the balance of probabilities the company was unable to pay the full amount of moneys owing, all that then was needed to be shown, was a “tenable cause of action” against the director (or other person defined by the Act) to obtain authorisation to join them to proceedings.

² [2017] NZCA 169

[12] Mr Adams has claimed Mr Radley aided and abetted the breaches and/or was directly or indirectly knowingly concerned in breaches of employment standards in respect of Mr Adams' employment. Mr Adams says the employment standards in question were the payment of minimum wages under the Minimum Wage Act 1983, the payment of his total outstanding wages under the Wages Protection Act 1983 and the payment of minimum holiday pay entitlements under the Holidays Act 2003.

[13] The Authority accordingly grants Mr Adams leave under s 142Y of the Act. Mr Radley is therefore joined to the proceedings as second respondent.

Costs

[14] Costs are reserved.

Geoff O'Sullivan
Member of the Employment Relations Authority