

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURAU ROHE**

[2021] NZERA 275  
3133596

BETWEEN                      A LABOUR INSPECTOR  
Applicant

AND                              BF7 TRADING LIMITED  
Respondent

Member of Authority:      Robin Arthur

Representatives:            Tim Gray, counsel for the Applicant  
Roy Bishop for the Respondent

Investigation:                On the papers and by case management conference on  
25 June 2021

Determination:               28 June 2021

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**DETERMINATION OF THE AUTHORITY**

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**A. Within 28 days of the date of this determination BF7 Trading Limited must comply with the terms of an Improvement Notice issued by the Labour Inspector on 3 March 2020.**

**B. Costs are reserved.**

**Employment Relationship Problem**

[1] On 3 March 2020 a Labour Inspector issued BF7 Trading Limited with an Improvement Notice under s 223D of the Employment Relations Act 2000 (the Act).

[2] The Improvement Notice identified failings by the company to comply with minimum employment standards. Those failings comprised use of a deductions clause in an employee's employment agreement that was contrary to law, not having all the mandatory elements in its wage and time records and holiday and leave records and not

providing a new employment agreement with a necessary clause about payment of time and a half for work on a public holiday.

[3] The Improvement Notice set out steps BF7 Trading Limited must take to comply with minimum employment standards. The company was required to complete those steps by 24 April 2020.

[4] In subsequent months the Inspector provided BF7 Trading Limited with extensions of time to comply because company representatives said they were preparing documentation to show they had done what the Improvement Notice required. No documentation was sent to the Inspector.

### **Application to the Authority**

[5] On 2 March 2021 the Inspector applied to the Authority for orders requiring BF7 Trading Limited to comply with the Improvement Notice and to pay a penalty for its failure to comply earlier. The Inspector also sought costs.

[6] The Inspector served a copy of the statement of problem in person on BF7 Trading Limited director Spencer Bishop. The company did not lodge a statement in reply.

[7] The Authority scheduled a case management conference by telephone to discuss how the Inspector's application would be dealt with in the absence of a response from BF7 Trading Limited. It advised the company that orders could be made in its absence. The company was also advised that, having failed to lodge a statement in reply, it would require the Authority's leave to reply or respond to the Inspector's application.<sup>1</sup>

[8] BF7 Trading Limited's operations manager Roy Bishop attended the conference. He confirmed he was authorised to represent BF7 Trading Limited in this matter, accepted the company had not completed the requirements of the Inspector's Improvement Notice and accepted an order requiring compliance within 28 days was reasonable.

[9] On the basis of Mr Bishop's confirmation and the information set out in the Inspector's statement of problem I was satisfied an order for compliance was necessary

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<sup>1</sup> Employment Relations Authority Regulations 2000, r 8(3).

and appropriate. The order set out above in paragraph A of this determination is made under s 223D(6), s 137(1)(a)(iiib) and s 137(3) of the Act.

### **Penalties**

[10] By agreement with the parties the remaining issue of penalties is reserved for determination on the papers. In the case management conference held on 25 June 2021 BF7 Trading Limited was granted leave to be heard on that issue by way of written submissions.<sup>2</sup> Timetable directions were made for the Inspector and the company to lodge submissions.

### **Costs**

[11] Costs are reserved for determination with the remaining issue of penalties.

Robin Arthur  
Member of the Employment Relations Authority

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<sup>2</sup> Employment Relations Authority Regulations 2000, r 8(4).