

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2021] NZERA 7  
3111272

BETWEEN	DARREN VINCENT OLIVER Applicant
AND	SCOTT HAULAGE 2010 LIMITED First Respondent
AND	STUART DALE BIGGS Second Respondent

Member of Authority:	David G Beck
Representatives:	Steven Zindel, Counsel for the Applicant No appearance from the Respondents
Investigation Meeting:	8 and 17 December 2020 by telephone
Submissions Received:	27 November 2020 from the Applicant None from the Respondent
Date of Determination:	12 January 2021

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Darren Vincent Oliver asserts that the first respondent Scott Haulage 2010 Limited (SCL) has failed to comply and meet monetary awards made in his favour including costs and a penalty as summarised in determinations of 29 January 2019 and 11 December 2018.<sup>1</sup> Mr Oliver in his 3 July 2020 application sought a direction from the Authority that the second

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<sup>1</sup> [2019] NZERA 36 and [2018] NZERA 183.

respondent, Stuart Dale Biggs sole director of the first respondent, takes active steps to ensure the aforementioned determinations are complied with pursuant to section 137(2) Employment Relations Act 2000 (“the Act”) and in accord with Judge Corkill’s Employment Court decision of *Allen Chambers Ltd v Pelabon*.<sup>2</sup>

[2] The first and second respondent did not participate in these proceedings and the matter has a long history of such non-participation with the first respondent failing to comply with five previous determinations.

### **The Authority Process**

[3] Pursuant to s 174E of the Act I make findings of fact and law and outline conclusions on matters to resolve the disputed issue under s 137(2) of the Act, and make orders but I do not record all evidence and submissions received.

### **Issues**

[4] In order to make a direction under s 137(2) of the Act, the Authority must be convinced that the second respondent, Mr Biggs, can exercise a sufficient degree of control over the first respondent SHL so that it is appropriate to order that he takes steps to ensure SHL meets its obligations to make the payments of outstanding awards to Mr Oliver. The Authority has the discretion to make this direction despite Mr Biggs not being in an employment relationship with Mr Oliver.<sup>3</sup>

### **Mr Biggs’ role**

[5] Mr Oliver and his counsel argued Mr Biggs as the sole director of SHL and the only person Mr Oliver had knowledge of as ‘owning and running the company’ was the only person to be in a position to direct SHL to meet its obligations. In the absence of any evidence to the contrary from Ms Biggs I reasonably conclude that this is the case and I find that it is in the interests of justice to direct him to take steps to ensure the obligations owed by SHL to Mr Oliver are met. In doing so, whilst this is not a determination that Mr Biggs is personally liable, I remind him that a failure to effect SHL’s obligations to meet long overdue payments arising out of the employment relationship could lead to Mr Biggs being fined up to \$40,000

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<sup>2</sup> *Allen Chambers Ltd v Pelabon* [2019] ERNZ 64, (2019) 16 NZELR 541.

<sup>3</sup> At [45] and [46].

and/or a term of imprisonment “not exceeding 3 months” and/or property of Mr Biggs being “sequestered” as per ss 140(6)(c), (d) and (e) of the Act. <sup>4</sup>

### **Summary s 137(2) direction**

[6] Pursuant to s 137(2) of the Employment Relations Act 2000, I direct that the second respondent, Stuart Dale Biggs as an agent of the first respondent, takes steps to ensure that Scott Haulage Limited 2010 pays Darren Vincent Oliver amounts outstanding identified in the Authority decisions of Member Dallas, being *Darren Oliver v Scott Haulage 2010 Limited* [2019] NZERA 36, 29 January 2019 and *Darren Oliver v Scott Haulage 2010 Limited* [2018] NZERA 183, 11 December 2018 by no later than 5pm Friday 12 February 2021.

### **Costs**

[7] Additional costs associated with this application are awarded at \$3,000 and the filing application fee of \$72.56 to Darren Vincent Oliver.

David Beck  
Member of the Employment Relations Authority

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<sup>4</sup> Section 140 (6) (c), (d) and (e) Employment Relations Act 2000.