

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2023] NZERA 498
3121152

	BETWEEN	ROBERT MORUNGA First Applicant
	AND	DANIEL COUPER Second Applicant
	AND	MCLC LIMITED (in liquidation) First Respondent
	AND	CRAIG MARRIS Second Respondent
	AND	RICHARD COUPER Third Respondent
Member of Authority:	Geoff O’Sullivan	
Representatives:	Kylie Hudson and Dharshini Ramanathan, counsel for the Applicants No appearance for the First Respondent Craig Marris and Richard Couper for themselves	
Investigation Meeting:	27 June 2023 at Blenheim	
Submissions Received:	4 July 2023 from the Applicants 5 July 2023 from Craig Marris	
Date of Determination:	4 Septmeber 2023	

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Both Robert Morunga and Daniel Couper claim lost wages and holiday pay from MCLC Limited (In Liquidation) (MCLC). Directors and shareholders of the company, namely

Richard Couper and Craig Marris, are joined to the claim. Originally, Amberley Logging Limited (in liquidation) and Marris Couper Logging Limited (in liquidation) were joined to the proceedings. When it became apparent that the employment relationship was with MCLC, those parties were removed from the proceedings.

[2] Although the company is in liquidation the Liquidator, Iain McLennan, has consented to the claims proceeding against the company.

[3] Mr Morunga claims he is owed a total of \$13,185.65 (less PAYE) consisting of:

- (a) \$4,500 wages;
- (b) \$5,260 for unpaid leave;
- (c) \$3,425.65 for holiday pay.

[4] Mr Couper is the father of the Third Respondent, Richard Couper. Daniel Couper claims he is owed a total of \$15,899 less PAYE made up of:

- (a) Three weeks unpaid wages of \$3,850.00;
- (b) Holiday pay of \$12,049.00.

[5] Mr Morunga and Daniel Couper also seek leave under s 142Y(2) of the Employment Relations Act 2000 to recover unpaid wages and holiday pay from the directors and shareholders, Craig Marris and Richard Couper personally.

[6] Mr Morunga and Daniel also have asked the Authority to consider imposing penalties against Mr Marris and Richard Couper on the basis they are both persons involved in a breach of minimum standards.

The Authority's investigation

[7] The Authority heard evidence on oath from Mr Morunga, Daniel Couper, Mr Craig Marris, and Mr Richard Couper. Although Mr McLennan did not attend the investigation meeting, he had during the course of proceedings answered specific questions put to him by a counsel for the Applicants which the parties accepted as accurate.

The evidence

[8] Both Mr Morunga and Daniel Couper were employees of MCLC. They undertook work for MCLC and when the company went into liquidation, they were not paid outstanding wages or holiday pay. Whilst Mr Morunga's claim is acknowledged by the Liquidator as preferential, Daniel Couper's claim, because of his relationship to Mr Richard Couper, is not.

[9] I accept the evidence from Mr Morunga and Daniel Couper in respect of what they are owed. Indeed, it was supported by the evidence of both Mr Marris and Mr Richard Couper. It appears both Mr Marris and Mr Richard Couper wanted Mr Morunga and Mr Daniel Couper to carry out work on a particular contract. It was agreed when payment came into the company from the customer, Mr Morunga and Mr Daniel Couper would be paid. Unfortunately, before Mr Morunga and Mr Daniel Couper could be paid the wages and holiday pay they had earned, the liquidation of MCLC stopped payment being made because of a lack of money. For the record I note that Mr Richard Couper was of the view he had exited the company and had entered into an agreement with Mr Marris regarding his exit and that agreement absolved him from any liability. There are two points to note:

- (a) Mr Richard Couper remained as a director and shareholder on the company record; and
- (b) Any arrangement between him and Mr Marris could at best only mean that Mr Marris had a contractual obligation to Mr Richard Couper. It does not alter the fact that Mr Marris and Mr Richard Couper have a liability to the company.

[10] The communications from the Liquidator, Mr Iain McLennan, clarified that between them, the shareholders Mr Marris and Mr Richard Couper, owed the company approximately \$92,000.00, with each having a liability for approximately half. Mr Marris had entered into a payment plan with the Liquidator, but Richard Couper had not engaged and had not responded to correspondence. At the investigation meeting, Mr Couper explained this by saying he had not received emails but in any event he had essentially left the company prior to it being placed in liquidation and had an agreement with Mr Marris.

Analysis

[11] The Liquidator Mr McLennan has confirmed that both Mr Marris and Richard Couper (the shareholders and directors) owe the company money. Mr McLennan believes this is around \$92,000.00 and assumes that if Mr Marris and Mr Richard Couper repay what they owe

back into the company, then it is likely Mr Morunga's and Mr Daniel Couper's claim can be met.

[12] It follows therefore, that it is unlikely s 142Y of the Act can be triggered as the Act provides that wages or other money may be recovered under the section only to the extent that MCLC is unable to pay the arrears and wages or other money. As it seems the company will be able to meet the claims provided the shareholders pay back what they owe, no order under s 142Y is made. Likewise I do not consider penalties appropriate.

[13] The evidence before the Authority is clear. Mr Robert Morunga and Mr Daniel Couper have proved MCLC owes them for lost wages and holiday pay. The liquidator's evidence is equally clear Mr Marris and Mr Richard Couper owe a significant sum to the company. Mr Marris has entered into a payment arrangement with the liquidator whereby he is reducing the amount he owes, however Mr Richard Couper has not to date engaged and has made no payments. Because the shareholders owe the company money, it is within their power to ensure any liability MCLC faces from the applicants, can be met. The shareholders had complete control over MCLC and it is currently in their power to put MCLC in a position where it can pay the monies owed to the two applicants. Accordingly, in reliance on *Northern Clerical Workers Union v Lawrence Publishers Co of New Zealand Limited*, the Authority has jurisdiction to order Mr Marris and Mr Richard Couper to pay the money they owe the company back to the company through the liquidator to ensure MCLC has the necessary funds to meet the Applicants' claims.¹

Orders

[14] MCLC Limited is ordered to make the following payments (when it is in a position to do so):

- (a) A sum of \$15,899 (less PAYE) to Mr Daniel Couper;
- (b) A sum of \$13,185.65 (less PAYE) to Mr Robert Morunga;
- (c) Within 14 days from the date of this determination, Mr Richard Couper and Mr Craig Marris are to arrange with the Liquidator Mr Iain McLennan to pay back to MCLC Limited (in liquidation) the monies they owe it, so that they they

¹ [1990] 1 NZILR 717.

ensure MCLC Limited (in liquidation) is put into a position where it can pay the monies it has been ordered to pay to the Applicants.

Costs

[15] MCLC Limited (in Liquidation) is ordered to make a contribution towards the applicants' costs of \$2000.00. Mr Marris and Mr Richard Couper are to take steps to ensure MCLC Limited (in Liquidation) can meet these costs.

Geoff O'Sullivan
Member of the Employment Relations Authority