

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA
TAIMAHI ŌTAUTAHI ROHE**

[2025] NZERA 128
3248039

BETWEEN	ANDY ADAMS Applicant
AND	ROBINSON FREIGHT LIMITED First Respondent
AND	NATHAN ROBINSON Second respondent

Member of Authority: Antoinette Baker

Representatives: Evie Hope, counsel, for the Applicant
No appearance for the Respondent

Investigation: On the papers

Last information received: 10 February 2025

Date of Determination: 4 March 2025

DETERMINATION OF THE AUTHORITY

[1] Mr Adams has applied for an order against the second respondent Mr Nathan Robinson as a ‘person involved¹’ to pay to Mr Adams an order that the first respondent (RF) has allegedly failed to pay. The order was part of my substantive determination² of the parties’ employment relationship problem where I found amongst other things that RF as Mr Adam’s former employer was to pay Mr Adams \$4,000.00 gross. This sum was for a wage arrears of an unpaid contractual notice period. In the same determination, I granted leave for Mr Adams to return to the Authority with this application under s 142Y(2)(a) of the Employment Relations Act 2000 (the Act).

¹ Employment Relations Act 2000, ss 142W(2) & (3)(a).

² *Adams v Robinson Freight Limited* [2024] NZERA 606 at [64].

[2] I held a brief case management teleconference on 10 February 2025 to discuss a timetable to progress this application. I am satisfied Mr Adam's counsel and Mr Robinson were notified and invited to participate. Mr Robinson did not appear. I continued without him with only the brief appearance of counsel for Mr Adams and an Authority Officer assisting. I issued Directions to the parties that same day to confirm that I would consider this matter 'on the papers' giving Mr Nathan Robinson time to provide to the Authority, and to Mr Adams, a sworn or affirmed affidavit and any relevant documentation in support of what he wanted to say about the application. My Directions also included that I may still consider hearing from the parties once any further information was provided if it appeared I needed to test evidence.

[3] Mr Robinson failed to provide anything further by 28 February 2025 as directed. There being nothing further for Mr Adams to reply to I reserved this determination to complete 'on the papers' based on the written material before me.

[4] Under ss 142W and 142Y of the Act a director and shareholder of the employer company can be held personally liable for a default in the payment of wages payable to the employee by the employer company to the extent that the employer company cannot pay the default. This is also if the default is a breach of 'employment standards' which includes³ a breach of s 4 of the Wages Protection Act 1983 which provides that an employer 'shall, when any wages become payable to a worker, pay the entire amount of those wages to that worker without deduction.'

[5] I have already found Mr Adams was entitled to be paid by RF the \$4,000.00 as wages due under his contractual terms upon termination of his employment. I am satisfied RF has defaulted on these wages owing and has continued to default by not paying the \$4,000.00 gross it was ordered by the Authority to pay to Mr Adams. The nonpayment is a breach of s5 of the Wages Protection Act 1983, falling within the definition of 'employment standards'.

[6] I am further satisfied that under s142Y(2) that RF is likely unable to pay the arrears of wages. Mr Robinson gave oral evidence in the substantive investigation meeting that RF has more debt than assets and has not traded for some time. While he

³ Employment Relations Act 2000, s5.

did not produce documentary evidence to support this position he has been consistent about saying this including in his expletive toned response to the application for costs by Mr Adams after the substantive determination. That this is also consistent with the Registrar of Companies' initiated action to remove RF from the register with public notice already given and the objection period lapsed. There has been a failure to file a return with the last one being on 29 August 2023.

[7] Accordingly, I find RF is likely unable to pay the arrears of \$4,000.00 gross to Mr Adams and this amount should now be paid in full to Mr Adams by Mr Robinson personally. Mr Adams is to be responsible for any PAYE liability on that amount paid.

Order

[8] I order that Nathan Robinson pay \$4,000.00 gross to Andy Adams pursuant to s 142Y of the Act.

Costs

[9] There was little in the way of an investigation process due to Mr Robinson's failure to engage in this process. Having completed the outcome expediently for Mr Adams there is no order for costs.

Antoinette Baker
Member of the Employment Relations Authority