

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CEA 2/07  
CA 16/08

BETWEEN                      ACTIVE PLANET LTD  
   Applicant  
  
AND                              LABOUR              INSPECTOR  
   JO-ANN DUFF  
   Respondent

Member of Authority:      James Crichton  
  
Representatives:              Jurgen Abele for Applicant  
   Jo-Ann Duff in person  
  
Investigation Meeting:      11 February 2008 at Queenstown  
  
Determination:                19 February 2008

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]      The applicant, Active Planet Ltd (Active Planet) objects to the demand notice dated 26 September 2007 which had been duly served on Active Planet.

[2]      In that demand notice the respondent Labour Inspector (Ms Duff) determined that an amount of \$2,725.80 gross was due and owing by Active Planet to a former employee Karl Gill in respect to unpaid public holidays, alternative holidays, and annual holidays.

[3]      Active Planet filed its objection in the Authority on 4 October 2007 and a statement in reply was filed by Ms Duff on 18 October 2007.

[4]      At the investigation meeting, Ms Duff confirmed on oath the detailed particulars that she had filed in the Authority in response to Active Planet's objection to the demand notice. Active Planet, through Mr Abele emphasised its wish to resolve the matter and indicated that that had been the company's wish all along.

[5] From an analysis of material before the Authority, there seemed to be three issues for Active Planet. The first was the prospect of a counterclaim against the former employee in respect to allegedly unpaid rent. Mr Abele confirmed that he now understood that that was not a matter that could be dealt with by the Authority and he had taken alternative enforcement action.

[6] The second issue was Mr Abele's contention that Active Planet needed time to pay the debt. Mr Abele said that he understood from the Labour Inspector and contact with the former employee that that request (for time to pay) would not be acceded to. It is clear from the papers (and Ms Duff made it clear in her evidence before the Authority) that that was not what Ms Duff had told Mr Abele; what she had said, and I accept, was that if there was a request for time to pay then there would need to be some supporting information to justify such a request. Her evidence was, and again I accept, that no such evidence was provided.

[7] Notwithstanding that, I indicated to Mr Abele that I was prepared to consider his request in the context of the Authority's decision, having heard his evidence before the Authority. The essence of the evidence on that point was simply that Active Planet was a small business with a frail cash flow and it would not be able to meet this impost in one lump sum.

[8] The third matter in contention was Active Planet's claim that the former employee's wages claim was misconceived in that he had not worked for the number of days that he claimed and which the calculation by Ms Duff had been based on. In this regard, Ms Duff had done her calculation on 127 days using information from the former employee, Active Planet having failed to provide alternative and definitive wage records. Conversely, Active Planet claimed that the former employee had only worked 109 days (that is approximately 20 days less) but Active Planet were unable to demonstrate the truth of that contention by evidence at the investigation meeting.

[9] I indicated that in those circumstances, I would give Active Planet seven days from the date of the hearing to furnish the Authority and Ms Duff with material relating to the hours of work of the former employee and that such information would be taken into account, if provided, in the Authority's determination.

**Determination**

[10] Active Planet having not provided further and better particulars as they suggested they might, it falls to the Authority to make its determination on the basis of the material already filed and served and the evidence adduced at the investigation meeting.

[11] I am satisfied that Ms Duff has properly calculated the wages owing to the former employee Mr Karl Gill based on the information provided to her, that that information was at the relevant time the best time available on which to make that calculation, that the company Active Planet Ltd was given every opportunity to meet its obligations by informal contact between Ms Duff and Mr Abele and that for whatever reason the matter remained unresolved at the point at which Ms Duff served on Active Planet Ltd a demand notice pursuant to s.224(1) of the Employment Relations Act 2000.

[12] I am further satisfied that the demand notice was properly prepared and served and that Active Planet's objection to that demand notice is not made out. Indeed Active Planet Ltd accept, albeit reluctantly, that they are indebted to Mr Karl Gill in the sum of \$2,725.80 (gross) but seek time to pay.

[13] I now direct that Active Planet Ltd pay to the Labour Inspector (Ms Duff) the sum of \$2,725.80 (gross) for the use of Mr Karl Gill and that such amount is to be paid over three months by three equal instalments:

1st instalment of \$908.60 due on 31 March 2008

2nd instalment of \$908.60 due one calendar month thereafter

3rd instalment of \$908.60 due two calendar months after the first instalment.

[14] In the event that Active Planet Ltd defaults on this payment schedule, forthwith on that default the whole sum owing will be due.

**Costs**

[15] Costs are to lie where they fall.

James Crichton  
Member of the Employment Relations Authority

