

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN B & D Doors (NZ) Ltd (Applicant)
AND Julian Blaker (Respondent)
REPRESENTATIVES Paul White for the applicant
Paul Pa'u for the respondent
MEMBER OF AUTHORITY James Wilson
INVESTIGATION MEETING Determined on the papers
DATE OF DETERMINATION 16 February 2007

DETERMINATION OF THE AUTHORITY

Background

[1] In a determination issued on 16 February 2006 (Determination AA 40/06) and I found that Mr Julian Blaker's dismissal by B & D Doors (NZ) Ltd was justified and that he did not have a personal grievance. On 14 July 2006 I issued a further determination (AA 40A/06) ordering Mr Blaker to pay B & D Doors \$1200, plus \$500 in disbursements, as a contribution towards their costs.

Applications for compliance and stay

[2] On 17 November 2006 B & D Doors filed a statement of problem requesting that I order Mr Blaker to comply with my earlier determination in respect to costs. In a statement in reply on behalf of Mr Blaker Mr Pa'u advised that his client had challenged both of the earlier determinations, that Mr Blaker was impecunious and requested that the costs decision be stayed pending the outcome of Mr Blaker's challenge.

[3] In an attempt to limit any unnecessary additional costs I issued a minute to the parties requiring:

- 1. Mr Pa'u is to file and serve evidence of his clients current financial position, in support of his claim that he is impecunious, and any submission he wishes to make in support of the application for stay, on or before Friday 2 February 2007.*
- 2. Assuming that B & D Doors wish to pursue this matter, Mr White is to file and serve a submission in response by Friday 9 February 2007.*

[4] Unfortunately I have received no submissions from Mr Pa'u. Mr White in his submission has argued that, in the absence of any submissions or evidence from Mr Blaker, I should not grant the request for stay and should make an order for compliance as per his client's original request.

Discussion

[5] The Employment Relations Act at s.180 says:

180 Election not to operate as stay

The making of any election under section 179 [to challenge a determination of the Authority] does not operate as a stay of proceedings on the determination of the Authority unless the Court, or the Authority, so orders.

Mr Blaker, through his representative, has argued that he is impecunious and that a stay of the costs determination would not prejudice B & D Doors. However when given an opportunity to provide evidence in support of his impecuniosity he failed to do so. Under these circumstances it would not be appropriate for the Authority to exercise its discretion and stay the determination.

Determination

[6] Mr Blaker is ordered to comply with the order for costs set out in my determination of 14 July 2006 (AA 40A/06) within 14 days of the date of this determination.

James Wilson
Member of Employment Relations Authority