

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 104A/09  
50143681

BETWEEN                      DARRYL CREEVEY  
   Applicant

AND                              AIMEX LIMITED  
   Respondent

Member of Authority:      Helen Doyle

Representatives:            Rebecca Frost, Counsel for Applicant  
   Dennis Creed, Counsel for Respondent

Determination:              11 September 2009

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**DETERMINATION OF THE AUTHORITY  
ON APPLICATION TO RE-OPEN**

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[1]      In determination CA104/09 the Authority found in favour of Mr Creevey that he had a personal grievance that he was unjustifiably dismissed. Orders were made in the determination against Aimex Limited for payment of lost wages and compensation and for reimbursement to Mr Creevey, at that time unrepresented, for the \$70 filing fee.

[2]      By letter dated 1 September 2009, Rebecca Frost, solicitor, advised that she was now acting for Mr Creevey. Ms Frost said in her letter that, upon applying to the District Court at Nelson for a distress warrant, it appeared five days before the Authority's investigation meeting, Aimex Limited had changed its name to Vickerman 42 Limited and on the same date a new Aimex Limited was incorporated. Ms Frost advised that the District Court had requested the determination and certificate of determination be reissued in the name of Vickerman 42 Limited in order to be able to execute the distress warrant.

[3] The Authority provided a Minute dated 2 September 2009 to Ms Frost and the solicitor who represented Aimex Limited at the investigation meeting, Mr Creed that provided:

1. *The Authority is in receipt of a letter dated 1 September 2009 from Ms Frost, who has now been instructed to represent Mr Creevey.*
2. *Ms Frost advises that on applying to the Nelson District Court for a distress warrant, it appeared that Aimex Limited changed its name to Vickerman 42 Limited on 22 May 2009, some five days before the Authority's investigation meeting on 27 May 2009. On 22 May 2009 a company called Aimex Limited was incorporated.*
3. *Ms Frost has asked the Authority to reissue the determination and certificate of determination in the name of Vickerman 42 Limited and has attached to the letter the relevant company searches.*
4. *Although Aimex Limited was represented at the investigation meeting by counsel there was no advice received that the respondent had changed its name.*
5. *The Authority intends to reopen its investigation for the purpose of changing the name of the respondent to Vickerman 42 Limited and the determination under clause 4 of the Second Schedule of the Employment Relations Act 2000 on Wednesday, 9 September 2009. The certificate of determination will also be changed to reflect the change in the respondent's name.*
6. *Aimex Limited has until that date to provide any submissions as to why that should not occur.*

[4] The Minute was supplied to Mr Creed by way of email and in hard copy. The Authority support officer received an out-of-office reply which confirmed that although Mr Creed was out of the office until 5 October 2009, his email would be picked up by a Ms Croll who would pass the email to the appropriate person. No response was received on behalf of Aimex Limited by 9 September 2009.

[5] I am satisfied from the company search that Vickerman 42 Limited is the same company as Aimex Limited, the respondent in CA104/09, with the only change being that of name.

[6] In all the circumstances I am satisfied that I should re-open the investigation for the limited purpose of making the orders in determination CA104/O9 against Vickerman 42 Limited, the new name of Aimex Limited. The name of Aimex Limited was changed five days before the investigation meeting without any notice being given to the Authority or Mr Creevey. Failure to re-open for that limited

purpose would potentially result in a miscarriage of justice in that Mr Creevey would be unable to enforce the orders he has obtained from the Authority.

### **Determination**

[7] The orders made in CA104/09 against Aimex Limited are now to be orders against Vickerman 42 Limited but in all other respects the determination, including the findings and the actual orders themselves remain the same.

### **Costs**

[8] Ms Frost sent a further email to the Authority dated 8 September 2009, asking for an award of costs against Vickerman 42 Limited in the sum of \$500 plus GST. She explained briefly that this covers the application for a distress warrant, company searches and correspondence with the company, Mr Creed and the Authority.

[9] The Authority cannot award costs in terms of the distress warrant as that is a District Court process. The Authority is unclear as to what disbursements were incurred in obtaining the company searches. There would have been costs incurred by Mr Creevey in terms of the letter from Ms Frost dated 1 September 2009 to the Authority to reissue the determination, in having Ms Frost consider the Authority Minute and send the final email concerning costs. There would also have been the costs incurred in terms of time to obtain and analyse the company searches.

[10] I assess that it would be appropriate to award costs to reflect about one hours work. Taking into account the inability to award costs in terms of a District Court process, a suitable award for costs in the circumstances would be \$250.

[11] I order Vickerman 42 Limited pay to Darryl Creevey the sum of \$250 being costs incurred in making the application to reopen and related matters thereto.

Helen Doyle  
Member of the Employment Relations Authority