

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Gary Drew (Applicant)  
**AND** McKellar Property Services Auckland Ltd (Respondent)  
**REPRESENTATIVES** Gregory Bennett for applicant  
Gregory Thomas for respondent  
**MEMBER OF AUTHORITY** Alastair Dumbleton  
**COSTS SUBMISSIONS**  
**RECEIVED** 10 and 15 March 2006  
**DATE OF DETERMINATION** 10 May 2006  
10 May 2006

**DETERMINATION OF THE AUTHORITY AS TO COSTS**

[1] Mr Gary Drew applied to the Authority on 23 January 2006 to have an employment relationship problem resolved. He claimed that the respondent McKellar Property Services Auckland Ltd (“MPS”) had unlawfully withheld wages due to him and had constructively dismissed him at the end of December 2005.

[2] On 25 January 2006, following an urgent telephone conference with the parties representatives, I directed them to undertake mediation on 3 February and, if that did not resolve the problem, to attend an investigation meeting on 10 February.

[3] The Authority was advised by a mediator on 7 February that Mr Drew’s problem had been resolved and that a settlement between the parties had been formally recorded by him under s.149 of the Employment Relations Act 2000.

[4] On 17 February Mr Drew applied to have the Authority order MPS to comply with the terms of that settlement as recorded. In particular, Mr Drew sought to enforce the written undertaking made in mediation by MPS to pay him \$8,659 “within 10 days of the date hereof,” that date being shown on the settlement document as 7 February 2006. The express requirement was for payment of that sum to be paid to Mr Drew “by way of direct credit.”

[5] The Authority notified the parties that it would hold an investigation meeting on 6 March 2006 to resolve this latest problem encountered by Mr Drew.

[6] On 2 March proof was provided to the Authority by Mr Thomas that MPS had paid Mr Drew the settlement sum of \$8,659. That sum had been credited to Mr Drew’s account that same day, 2 March 2006, over a fortnight later than it should have been paid. In withdrawing the application

for a compliance order Mr Bennett sought costs of \$150 on behalf of Mr Drew.

[7] The application made to the Authority in January should have been the end of Mr Drews expenses here. He had to attend mediation to reach settlement but his costs there are not recoverable from the Authority. As the application had to be revived when the terms of settlement were not complied with, I consider it is right that he should recover some of his costs.

[8] The application for a compliance order should not have been necessary, as it is clear that the parties intended the settlement sum to be direct credited to Mr Drew, he being “the applicant” referred to. The strong and obvious inference from the terms of settlement was that in the absence of any details of an account number the money would be paid to the same account that MPS had paid Mr Drew’s wages into from the start of his employment in September 2005. Although Mr Bennett reconfirmed that account number to Mr Thomas on 22 February, the payment was still not made until 2 March 2006. It should have been paid by 17 February at the latest, as MPS had agreed would be done.

[9] I fix costs at \$70 which is about half of the \$150 sought and is also equivalent to the application fee paid by Mr Drew. It is to be paid immediately by MPS to Mr Drew by way of direct credit. Interest on \$70 is also to be paid from 17 February 2006 at 9.5%, that rate being the current 90-day bill rate (7.5%) plus 2%, as allowed for by clause 11 of Schedule 2 of the Employment Relations Act.

[10] Should Mr Drew not be paid \$70 plus interest immediately by MPS, he is permitted by the Act to apply to the Authority for a further compliance order as a first step in a procedure which may ultimately lead to MPS being fined by the Employment Court (up to \$40,000) and/or having its property seized to pay the amount owing.

A Dumbleton  
**Member of Employment Relations Authority**