

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2019] NZERA 510
3051092

BETWEEN SHAKEEL GILL
 Applicant

AND NAVIN SHARMA
 Respondent

Member of Authority: Nicola Craig

Representatives: David Prisk, advocate for the Applicant
 Muhammad Khan, agent for the Respondent

Investigation Meeting: On the papers

Submissions and other
information received: 12 April and 31 May 2019 from the Applicant
 29 May 2019 from the Respondent

Date of determination: 30 August 2019

DETERMINATION OF THE AUTHORITY

- A. Navin Sharma is a person involved in breaches of employment standards regarding Shakeel Gill.**

- B. Leave is granted to Mr Gill to bring a recovery claim against Mr Sharma under s 142Y of the Employment Relations Act 2000.**

- C. Costs are reserved.**

What is the employment relationship problem?

[1] The Authority issued a determination upholding several claims by Shakeel Gill against his former employer, South Auckland Vehicle Imports Limited (now in liquidation) (SAVI or the company).¹ In that determination SAVI was ordered to pay sums as personal grievance remedies, arrears of wages and other money owing, and a penalty.

[2] After the previous determination being issued, SAVI was put into liquidation and Mr Gill did not receive payment. He now brings a claim against Navin Sharma, the sole director of SAVI. Mr Sharma does not consider that he should be personally liable for the sums under the previous determination, as he was not the employer and the debts are company debts.

What was the Authority's process?

[3] Mr Sharma initially represented himself in this proceeding.

[4] At a case management conference the parties agreed that this matter could be decided on the papers. A timetable was agreed for the filing of further evidence and submissions by the parties. This was confirmed in a minute provided to the parties.

[5] Submissions and documents were received on behalf of Mr Gill. Mr Sharma did not file anything by the deadline nor make contact with the Authority. Given that Mr Sharma was representing himself, the Authority of its own volition permitted him another week to file documents.

[6] Muhammad Khan then sought an extension of time for three weeks on the basis of Mr Sharma being in Australia to attend a funeral and family matters and the need to discuss issues fully with him. Mr Khan represented SAVI for some stages of the previous proceeding. Mr Gill opposed the extension.

[7] Mr Khan then sought a seven day extension. The Authority sought confirmation that Mr Khan was representing Mr Sharma in this matter, as that was not specified in the extension requests. Mr Khan stated that he was acting as an agent for Mr Sharma for a limited purpose. Clarification was sought and Mr Khan stated that

¹ *Shakeel Gill v South Auckland Vehicle Imports Limited* [2018] NZERA Auckland 108 (File 3010892)

he was an agent to receive documents for Mr Sharma when he was overseas, send them to him and file documents for him.

[8] Extensive efforts were made by the Authority to seek satisfactory evidence of Mr Sharma's travel plans. A partial airline email regarding his departure to Fiji some six weeks previously was initially received but nothing regarding his return. Mr Sharma then advised that a return ticket had not been booked but offered to provide confirmation when it had been.

[9] The Authority then directed that a copy of a return ticket was to be filed or the Authority would make a decision regarding his extension application without evidence that he was currently overseas. An email was received from a travel agent with some flight information, asking for payment for the flight. Mr Sharma himself then requested two weeks from his return to New Zealand to file the necessary documents. Mr Sharma was granted a further few days to file any documents but nothing was received.

[10] There was then an indication of possible resolution of the matter but agreement was not ultimately reached.

[11] Although no formal submissions were received for Mr Sharma, I take into account the statement in reply and amended statement in reply in this proceeding and what was said by him during the case management conference.

[12] This determination includes findings and orders but does not record all the evidence and submissions received, as permitted by s 174E of the Employment Relations Act 2000 (the Act).

What are the issues?

[13] As Mr Sharma identifies, SAVI was Mr Gill's employer and Mr Sharma was not. However, the regime under Part 9A of the Act provides additional measures for enforcing employment standards. This includes in proscribed circumstances, orders against persons who were not the employer. The application under s 142Y of the Act is one example.

[14] Mr Gill is seeking under s 142Y an order for payment to be made by Mr Sharma personally of some of the sums owing under the previous determination.

[15] There is some complexity to aspects of Part 9A. As Mr Gill's claim is not being pursued by a Labour Inspector, arrears may only be recovered by him against Mr Sharma under that section with the "prior leave" of the Authority.² The previous proceeding only involved SAVI as a party, not Mr Sharma personally.³ Leave is therefore first required. I cannot make an order for payment against Mr Sharma at the same time as leave is granted.

[16] At this stage I consider whether Mr Sharma is a person involved in breaches of employment standards under s 142W of the Act, this being a requirement in s 142Y(1)(c).

[17] If I determine that he is, I can then go on in a later determination to consider whether SAVI is unable to pay the arrears of wages or other money under s 142Y(2)(a) of the Act, whether all the money sought by Mr Gill is susceptible to an order under s 142Y(1), any defences and whether an order should be made under that section.

Is Mr Sharma a person involved in a breach of employment standards?

[18] Under s 142W(1) of the Act a person is involved in a breach of employment standards if, amongst other things, they aided or abetted, or was in any way knowingly concerned or party to the breach. Only officers of companies, including directors, may be treated as a person involved, when a company commits a breach.⁴

[19] At this point I do not consider it necessary to decide whether all parts of the amount sought to be ordered against Mr Sharma come within the definition of employment standards.⁵ It is clear that at least some of them do. The definition includes the minimum entitlements and payment for those under the Holidays Act 2003. In the previous determination I ordered SAVI to make payments of holiday pay, public holiday pay and alternative holiday pay; all minimum entitlements under the Holidays Act. SAVI thus breached employment standards.

[20] Was Mr Sharma a person involved in the breaches? Mr Sharma was the sole director of SAVI for the whole of Mr Gill's employment with the company and has remained so until the present day. He was actively involved in running the SAVI

² Employment Relations Act, s 142Y (2)(a)

³ 3010892

⁴ Employment Relations Act, s 142W(2) and (3)

⁵ Employment Relations Act, s 5

business during Mr Gill's employment with the company. Although he was not based at the same car yard as Mr Gill, Mr Sharma was responsible for making wage and other payments to staff including Mr Gill.

[21] Mr Sharma is a person involved in breaches of employment standards.

Should leave be granted?

[22] No adequate reason has been put forward as to why leave should not be granted. I grant Mr Gill leave to bring a recovery claim against Mr Sharma under s 142Y of the Act.

What is the next step?

[23] Having granted leave to pursue recovery against Mr Sharma, an Authority officer will be in contact with the parties shortly to confirm a timetable for the filing of any further evidence or submissions on the issues still outstanding. The Authority will then decide whether to order Mr Sharma to make payment to Mr Gill.

Costs

[24] Costs are reserved.

Nicola Craig

Member of the Employment Relations Authority