

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2012] NZERA Wellington 16
5360375 & 5367231

BETWEEN KATHY GUDOPP
Applicant

AND DHALL AND NASH FINE
WINES LIMITED
Respondent

Member of Authority: G J Wood

Representatives: Russell Wilson for the Applicant
Puneet Dhall for the Respondent

Investigation Meeting: 3 February 2012 at New Plymouth

Determination: 10 February 2012

DETERMINATION OF THE AUTHORITY

[1] This determination brings to a conclusion a long running saga over the delivery of certain wines to Ms Gudopp as part of agreed terms of settlement. The details of the arrangements are set out in my earlier determination making a compliance order [2011] NZERA Wellington 173.

[2] Following an agreement reached between the parties at the investigation meeting, Ms Gudopp has been provided with the full four months supply of wine to the parties' satisfaction, and the agreed reference to her satisfaction. I congratulate the parties on coming to this resolution, albeit well beyond the timeframe agreed in the terms of settlement. It means that the requirements on Dhall and Nash, including those set out in the compliance order made in [2011] NZERA Wellington 173 (dated 10 November), have been met. However, the issue of costs remains.

[3] Mr Wilson, on behalf of Ms Gudopp, who was legally aided, seeks solicitor client costs in excess of \$3,500 for both applications for compliance, one in relation to

orders of wine in September 2011, and the other in relation to the other three orders of wine in the following three months. Dhall and Nash in turn seek costs of over \$3,000.

[4] The main issue between the parties has been the base document on which Dhall and Nash would supply Ms Gudopp with a selection of wines of her choosing at trade rates. Despite all Mr Dhall has impressed upon me, that matter was determined on 10 November and the Authority simply can not re-determine the issue, notwithstanding his urgings. At that date Dhall and Nash was required to comply with the compliance order by providing Ms Gudopp with the stock she ordered from a trade catalogue. If that catalogue came to be out of date, Dhall and Nash was under an obligation to supply Ms Gudopp with a new copy of the trade catalogue as soon as it came into effect. While Mr Dhall noted that Dhall and Nash no longer used trade catalogues, it is relevant that a large number of wines on the trade catalogue remain available for purchase through Dhall and Nash's website. Furthermore, the list previously made available by Mr Dhall did not provide any way for Ms Gudopp to ascertain whether or not a selection made from that document would be at trade prices. In addition, the reference was not provided in the form undertaken by Mr Dhall in the course of the first investigation. Mr Dhall then failed to provide the stock ordered by Ms Gudopp over the next three months.

[5] Dhall and Nash has not met its obligations within the timeframes set by the original terms of agreement, which has been a major reason for the problems here. A further problem is that Mr Dhall, at best, misinterpreted the terms of the agreement and provided a product list that favoured Dhall and Nash, as it was restricted to stock on hand only. However, the products available to trade customers were much broader than this, as its own website shows. Furthermore, Ms Gudopp did not have the ability to determine on the basis of the list supplied by Mr Dhall as to whether the prices offered were trade prices. Any failures or delays in compliance are therefore the consequence of Dhall and Nash Fine Wines Limited's failures and omissions, rather than anything Ms Gudopp is responsible for. She was, and is, entitled to enforce the terms of her settlement.

[6] It therefore follows that both applications were necessary in order for Ms Gudopp to get compliance with the parties' terms of settlement, and that she is entitled to seek a contribution towards her costs. It is fundamental to the workings of the employment relations system that settlements are adhered to. In these

circumstances, Ms Gudopp is entitled to a contribution to her legal costs, rather than contribute to those of Dhall and Nash. On the other hand, a sense of proportion needs to be maintained. The sum in issue equated to around \$2,000 of trade stock. Therefore it would seem unnecessary to spend in excess of \$3,500 to enforce such an agreement. Similarly, the matter has not involved a lot of time in meetings and preparation.

[7] In all the circumstances of this case I consider that, given the need for two, albeit very brief, investigation meetings, a contribution to the applicant's costs in the sum of \$1,500 is appropriate. I therefore order the respondent, Dhall and Nash Fine Wines Limited, to pay to the applicant, Kathy Gudopp, the sum of \$1,500 in costs.

G J Wood
Member of the Employment Relations Authority