

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Jonathan Denis Henning, Labour Inspector (Applicant)
AND Glenmavis Limited (Respondent)
REPRESENTATIVES Jon Henning in person
Brian Walker on behalf of the respondent
MEMBER OF AUTHORITY Philip Cheyne
INVESTIGATION MEETING Dunedin 23 April 2007
DATE OF DETERMINATION 26 April 2007

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Mr Henning is a Labour Inspector. By lodging a statement of problem on 13 February he seeks a compliance order to enforce a demand notice served on the respondent company on 30 November 2006. The demand notice relates to holiday pay calculated by the Labour Inspector as owing to two former employees of the respondent.

[2] I am satisfied that the statement of problem was properly served on Glenmavis Limited at its registered office on 14 February 2007. The respondent did not lodge any statement in reply. Accordingly, arrangements were made for an investigation meeting. I am satisfied that the notice of meeting was served on the respondent on 5 April 2007. That prompted some belated contact with the Authority on behalf of the respondent but nothing was lodged setting out the respondent's position regarding the holiday pay said to be owed, the failure to lodge a objection to the demand notice or the failure to lodge a statement in reply.

Investigation Meeting

[3] Brian Walker attended the investigation meeting for the respondent. He said that he is a trustee of the family trust that owns the respondent although he is not listed on the company's office website showing the directors and the shareholders of Glenmavis Limited. He acknowledged that the respondent had received the demand notice, the statement of problem and the notice of investigation meeting. Mr Walker outlined the company's objection to paying the sums referred to in the demand notice. That relates partly to debts said to be owed by the two employees to the respondent and partly to when and whether the employees took any holidays during the employment. Both points in turn are connected to the company's dissatisfaction with the employees in the context of absentee owners. Company officers are normally a considerable distance away from the place of employment. Mr Walker also seemed to be critical of how the Labour Inspector had handled the matter before and after the demand notice. He also referred vaguely to Christmas to try and explain why no objection was lodged.

Determination

[4] A demand notice is something of a summary judgment process. At this point in time, there being lodged neither an objection nor an application to extend time, the Labour Inspector is perfectly entitled to utilise the District Court debt recovery processes to enforce the demand notice which must be seen as having the effect of a judgment. Here, the Labour Inspector seeks a compliance order but I do not think that any different considerations should apply. The respondent is apparently able to pay the sums referred to and its reluctance to do so appears to be born out of dissatisfaction with the former employees. However, the point in time to raise issues has well gone past.

[5] I am not satisfied that there is any good reason to explain the failure by Glenmavis Limited to lodge an objection to the demand notice. Nor am I satisfied that there is any good reason to explain the respondent's failure to lodge a statement in reply. It follows that the demand notice should be enforced by a compliance order.

[6] Accordingly I order Glenmavis to comply with the demand notice by paying to the Labour Inspector for the use of the two named employees the sums mentioned in the demand notice. Glenmavis Limited must comply with this order within 14 days of receiving this determination.

[7] Costs are reserved.

Philip Cheyne
Member of Employment Relations Authority