

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2012] NZERA Christchurch 217
5390247

BETWEEN JOHNNY ARTHUR INNS
Applicant

A N D TNL GROUP LIMITED
Respondent

Member of Authority: Christine Hickey

Representatives: Georgina Burness, representing the Applicant
Richard Mears, for the Respondent

Investigation meeting: By teleconference on 9 October 2012 and costs dealt
with on the papers

Submissions Received Orally and by e-mail on 9 October 2012

Date of Determination: 11 October 2012

**COMPLIANCE ORDER & COSTS DETERMINATION OF THE
AUTHORITY**

A. TNL Group Limited is to pay Johnny Arthur Inns \$300.15 in costs.

**B. TNL Group Limited is to pay Johnny Arthur Inns \$71.56 as
reimbursement for the lodgement fee.**

Employment relationship problem and background

[1] On 27 July 2012 the Applicant lodged a Statement of Problem with the Authority. The problem the Applicant wished the Authority to resolve was non-compliance with the Record of Settlement dated 15 June 2012 between the Applicant and TNL Group Limited (TNL). In particular, the Applicant alleged that TNL had not provided him with the certificate of service that it had agreed to provide within 7 days of the settlement date stating *the position he held and the period of his employment*.

[2] Mr Inns asked for the Authority to ensure compliance by ordering TNL to provide the certificate of service. He also asked for reimbursement of the filing fee of \$71.56 and for costs for Ms Burness' representation of \$500.00.

[3] On 26 July 2012 Ms Burness e-mailed Mr Mears asking for the certificate of service to be provided and alerting him to the fact that she had been instructed to *file for non-compliance with the settlement and will also ask for costs regarding this matter.*

[4] By return e-mail Mr Mears sent Ms Burness an e-mailed copy of the certificate of service that TNL had posted to Mr Inns on 18 June 2012. He wrote *once again there appears to have been an issue with written correspondence reaching John.* I note that the certificate of service dated 15 June 2012 reads:

This letter is to confirm that John Inns was employed by TNL Freighting Christchurch from the 10th of February 2010 through to his resignation on the 15th of June 2012.

[5] On 13 August 2012 TNL lodged a Statement in Reply saying that it had sent the certificate of service through the post on 18 June 2012 to the address it had for Mr Inns. TNL noted that it was the second time correspondence posted by TNL failed to reach Mr Inns.

Determination

[6] On 9 October 2012 I held a directions conference by telephone with Ms Burness and Mr Mears. It was during that conference that Mr Mears first appreciated that he had made a mistake in writing the certificate of service because he failed to include Mr Inn's position as a class 5 truck driver in the certificate of service.

[7] I identified that Mr Inns address was noted as 34 ... Avenue, Christchurch on Mr Inns' Employee Personal Information form held by TNL, which is the address the certificate had been mailed to on 18 June 2012. However, in the Statement of Problem Mr Inns' address is recorded as **33** ... Avenue.

[8] I directed Ms Burness to check the address and to notify Mr Mears and the Authority of the correct address. She agreed to do so.

[9] I directed Mr Mears to amend the certificate of service to include Mr Inns' position with TNL and to send the amended certificate to the address notified by

Ms Burness. I also directed that TNL send the certificate of service to Mr Inns *by signature required courier delivery* and to e-mail a copy of the certificate to the Authority and to Ms Burness.

[10] By e-mail dated 11 October 2012 Ms Burness advised the Authority that Mr Inns received the certificate of service on 10 October 2012 and was satisfied with its content.

[11] That being the case there is no longer a need for me to order compliance with the Record of Settlement as I am satisfied that it has now been complied with.

Costs

[12] Ms Burness' costs associated with ensuring compliance were estimated at \$500.00 in the Statement of Problem. I directed her to more clearly specify her costs.

[13] On 9 October 2012 Ms Burness clarified that she claimed 3 hours of time at \$87.00 per hour amounting to \$300.15 including GST.

[14] On 9 October 2012 Mr Mears responded to Ms Burness' application for costs. He stated that he could not see how the process took three hours. He considered the application for costs was *merely a measure to obtain monies and that the matter was closed some months ago*.

[15] Mr Mears also commented that it was only on 9 October 2012 that it was *discovered* that TNL did not have Mr Inns' correct address. He submitted that *every attempt was made by TNL Freightling and myself to ensure correspondence reached John*.

[16] I consider that TNL is not at fault for the certificate dated 15 June 2012 not reaching Mr Inns. TNL used the address that was noted on Mr Inns' personal information form, presumably by Mr Inns when he was first employed. However, the Statement of Problem should have put TNL on notice that it had failed to include Mr Inns' position in the 15 June 2012 certificate and that Mr Inns address as noted on the Statement of Problem was not the same as the address that it had on record.

[17] TNL's full compliance with the record of settlement was achieved only with the assistance of the Authority. I consider that Ms Burness' costs including taking instructions from her client, lodging the Statement of Problem with the Authority,

liaising with Mr Mears, attending the 9 October directions conference, verifying Mr Inns' address and notifying TNL of the correct address are reasonable.

[18] TNL is to pay Johnny Arthur Inns \$300.15 for costs involved with ensuring he received the certificate of service TNL agreed to provide. TNL should also reimburse Mr Inns the \$71.56 it cost for the problem to be lodged with the Authority.

Christine Hickey
Member of the Employment Relations Authority