

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2012] NZERA Christchurch 214
5371801

BETWEEN EDWIN JACKSON
 Applicant

A N D RHINO PAINTERS LIMITED
 Respondent

Member of Authority: Alastair Dumbleton

Submissions Received 29 June and (by telephone) 2 October 2012

Date of Determination: 5 October 2012

COSTS DETERMINATION OF THE AUTHORITY

[1] By statement of problem dated 22 February 2012, the applicant, Mr Edwin Jackson, applied to the Authority for an order requiring the respondent, Rhino Painters Ltd, to comply with the terms of a Record of Settlement made under s 149 of the Employment Relations Act 2000. Mr Jackson also sought a “fine” to be imposed against the company for breach of a term of the settlement and asked for that to be paid to him in full. Costs were applied for.

[2] A statement in reply from Rhino Painters acknowledged that a term recorded in the settlement on 31 January 2012 required the company to pay Mr Jackson \$6,500 under s 123(1)(c)(i) of the Act and was not complied with before the agreed date of 11 February 2012. Due to cashflow problems Rhino Painters Ltd had been unable to comply until 22 February when \$3,000 was paid, the rest being paid a few days later.

[3] Compliance was therefore an appropriate remedy for Mr Jackson to apply for, which he did promptly and, I accept, before he had received payment in full. Legal costs were incurred as a result and he is entitled to some compensation for an expense he was unnecessarily put to.

[4] Although it is understandable why, in carrying on business in the Canterbury rebuild, Rhino Painters had a temporary cash flow problem, and there is no suggestion that it simply reneged on its contractual undertaking to pay the money, the company had bound itself to do so as part of the statutory mediation process in which its rights and obligations had clearly been explained to it by the mediator before the Record of Settlement was signed. Rhino Painters may have simply taken the chance that contractors would discharge their debts by due date, leaving it with sufficient funds. This appears to have been a gamble that did not pay off.

[5] The preparation and lodging of an enforcement application to the Authority should have been a fairly straightforward exercise that did not require a great deal of time spent on it. I consider that \$400 will be a reasonable contribution to costs and accordingly, in the exercise of the Authority's discretion pursuant to clause 15 of Schedule 2 of the Act, Rhino Painters Ltd is ordered to pay Mr Edwin Jackson costs of \$400. The company is also to reimburse him \$71.56 as the fee for lodging his application.

Penalty

[6] When the Authority inquired as to the basis on which a "fine" had been claimed under the Act, Mr Macdonald, advocate for Mr Jackson, accepted that there was no jurisdiction to provide that remedy for breach of a Record of Settlement.

Payment of holiday entitlement

[7] A term of the Record of Settlement required Rhino Painters to pay Mr Jackson all outstanding wages and statutory entitlements up to the date of his resignation, 20 January 2012, once the agreement had been signed.

[8] By amended statement of problem, Mr Jackson sought an order requiring Rhino Painters to either provide information confirming that all accrued holiday entitlements had been paid, or pay to him what was due as at the date of termination of his employment. The amended application is simply a request for information to confirm whether or not the holiday entitlement was paid.

[9] After discussion with Mr Macdonald and Mr Thompson, the Authority considered it should make an order requiring Rhino Painters to disclose its holiday and leave record kept for Mr Jackson as required under s 81 of the Holidays Act 2003.

If that record was amalgamated into the wage and time records required to be kept under the Act, then within 14 days of the date of this determination Rhino Painters is to disclose to the Authority those records which show the entitlements to holidays of Mr Jackson and any payments that were made to him for that upon termination of his employment in January 2012. The Authority will send a copy to Mr Macdonald. The direction is given under s 221 of the Act.

A Dumbleton
Member of the Employment Relations Authority