



Employment Court of New Zealand

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Jinkinson v Oceana Gold (NZ) Limited [2010] NZEmpC 139 (22 October 2010)

Last Updated: 1 November 2010

IN THE EMPLOYMENT COURT CHRISTCHURCH

[\[2010\] NZEMPC 139](#)

CRC 4/08

IN THE MATTER OF a challenge to a determination of the

Employment Relations Authority

AND

IN THE MATTER OF an application for a stay of execution of an order for reimbursement of lost remuneration

BETWEEN TRACEY JINKINSON Plaintiff

AND OCEANA GOLD (NZ) LIMITED Defendant

Hearing: by telephone conference 22 October 2010

Appearances: Raelene Kelly, counsel for the plaintiff

Lesley Brook, counsel for the defendant

Judgment: 22 October 2010

THIRD JUDGMENT OF JUDGE A A COUCH

[1] In my substantive judgment dated 4 August 2010^[1], I ordered the defendant to reimburse the plaintiff for the wages she had lost from the time of her dismissal down to the date of her reinstatement, less three months' wages.

[2] On 24 August 2010, the defendant made application to the Court of Appeal for leave to appeal that order for reimbursement of lost wages.

[3] The defendant has now filed an application for stay of execution of my order for reimbursement of lost wages. That application is opposed. The application and

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notice of opposition set out in detail the grounds relied on by the parties. I was also provided with several parts of an exchange of correspondence between the parties' solicitors in which the sum required to satisfy my order for reimbursement was quantified and agreed. Against the background of those documents, I conducted a telephone conference with counsel today.

[4] The parties are agreed that the total amount required to satisfy the order for reimbursement of lost wages is \$128,555.60 inclusive of interest.

[5] When the application for stay was filed, the defendant paid into Court the sum of \$86,395.17 being the net amount payable to the plaintiff after deduction at source of income tax. Mrs Brooks accepted on behalf of the defendant that any payment made into Court or to a stakeholder should be calculated by reference to the gross amount payable rather than the net amount after tax.

[6] My order for reimbursement of lost wages comprised the order the Court was required to make under [s128\(2\)](#) of the

[Employment Relations Act 2000](#) together with an additional amount under the discretionary provisions of [s128\(3\)](#). Mrs Brook confirmed that the defendant does not seek leave to appeal that part of my order made under [s128\(2\)](#).

[7] Ms Kelly expressed concern that, if money is paid into Court pending a final outcome, it will attract interest at a significantly lower rate than would be paid on a solicitor's trust account. Mrs Brook acknowledged this but was concerned that, if money was paid into the trust account of the plaintiff's solicitors, it would be subject to any instructions she might give them to pay it out.

[8] Following discussion with counsel, I make the following orders by consent:

a) The defendant is to pay the plaintiff an amount equal to three months' wages at the rate applicable immediately after her dismissal in December 2006. It is agreed that sum is \$13,697.75 gross. The defendant will deduct tax at source and remit that to Inland Revenue. The balance is to be paid to Wilkinson Adams for the immediate use

of the plaintiff. Payment is to be made within 10 working days after the date of this judgment.

b) The balance of the total amount required to satisfy my order, which I calculate to be \$114,857.85, is to be paid into the Wilkinson Adams solicitors trust account on the following basis:

i) The sum paid into Court is to be paid out immediately to

Wilkinson Adams.

ii) The balance is to be paid by the defendant to Wilkinson

Adams within 10 working days after the date of this judgment.

iii) The money is to be held on trust for the parties jointly pending the resolution of the defendant's application for leave to appeal to the Court of Appeal and, if leave is granted, of that appeal.

iv) The money is to be placed on interest bearing deposit.

v) The money is to be disbursed only by agreement of the parties or by order of the Court.

c) Execution of the order for reimbursement is stayed with immediate effect and, provided the defendant makes the payments required within the time allowed, that stay is to remain in effect until further order of the Court.

[9] Costs are reserved.

A A Couch
Judge

Signed at 12.45pm on 22 October 2010

[1] [\[2010\] NZEmpC 102](#)

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