

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2012] NZERA Christchurch 185
5369326

BETWEEN LABOUR INSPECTOR DUFF
 Applicant

A N D ANNE PARINGATAI trading
 as PHYSIOPLUS
 Respondent

Member of Authority: James Crichton

Representatives: Applicant in person
 No appearance for Respondent

Investigation Meeting: 15 August 2012 at Dunedin

Date of Determination: 30 August 2012

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant Labour Inspector (Ms Duff) seeks the imposition of a penalty for the failure of the respondent employer (Ms Paringatai) to supply wage, time and holiday records and also seeks compliance to require that information to be furnished to the Labour Inspector by Ms Paringatai. The Labour Inspectorate had received a request from a former employee of Ms Paringatai (Marika Dunn) who claimed payment of wages for a 35 week period during the employment relationship. Initially the contact with Ms Paringatai was managed by Mr Karl Sankey from the Department of Labour. Mr Sankey made eight separate attempts to contact Ms Paringatai from 2 September 2011 down to 27 September 2011 when the first and only meeting with Ms Paringatai took place. In that meeting, Mr Sankey encouraged Ms Paringatai to enter into a payment plan with Ms Dunn which he undertook to facilitate.

[2] Subsequent to that meeting a payment plan was proposed on 30 September 2011 by Ms Paringatai in which she offered two separate and distinct alternatives for consideration.

[3] Mr Sankey sought to facilitate the agreement between the parties but no further contact from Ms Paringatai was received, nor were any payments made on account. Accordingly, on 19 October 2011, Mr Sankey indicated that the letter would be referred to Ms Duff who, as a statutory officer, had the power to pursue the matter using legal process.

[4] Ms Duff then made 12 separate attempts to contact Ms Paringatai, none of which were successful and on 19 January 2012, Ms Duff indicated to Ms Paringatai that the matter would be filed in the Authority seeking compliance and other remedies.

[5] To the date of the investigation meeting, no signed employment agreement, time, wage or holiday records relating to Ms Dunn's employment, have been received by Ms Duff.

[6] At the investigation meeting, the Authority heard evidence from Mr Sankey and Ms Duff about their attempts to resolve this matter. Despite being formally served with a complete copy of the notice of hearing, the statement of problem and the Authority's notice of direction dated 24 May 2012 in which the Authority made it clear that if Ms Paringatai failed to participate in the Authority's process she risked having a decision made against her without her involvement, Ms Paringatai did not attend the hearing. The Authority is satisfied that the failure to attend was wilful rather than inadvertent; Ms Paringatai herself received the documents relating to the hearing, including the notice of direction just referred to and yet she failed to engage in the Authority's process.

Determination

[7] By section 229 of the Employment Relations Act 2000 (the Act) Labour Inspectors have the power to require the production of a wage and time or holiday and leave record or employment agreement of any employer relating to any employee. Further, that section allows a Labour Inspector to seek a penalty in respect of that failure and also to seek compliance.

[8] Accordingly, by the powers vested in the Authority by the Act, the Authority now:

- a. Imposes a penalty on Ms Paringatai in the sum of \$2,000 for her failure to supply the records sought by Ms Duff pursuant to section 229(1) of the Act and section 82 of the Holidays Act 2003, such penalty to be paid by Ms Paringatai to Ms Duff for her to pass on to Marika Dunn for the latter's use in all things;
- b. Orders compliance with the request made by Ms Duff for a copy of all time, wage and holiday records together with the employment agreement for Marika Dunn; and
- c. As to the compliance order, Ms Paringatai has 14 days from the date of this determination to supply to Ms Duff, Ms Marika Dunn's employment agreement and a copy of all time, wage and holiday records relating to Ms Dunn's employment.

James Crichton
Member of the Employment Relations Authority