

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA169/08  
5124528

BETWEEN                      LABOUR INSPECTOR  
   Applicant  
  
AND                                VIZUAL PHOTOMEDIA  
   LIMITED  
   Respondent

Member of Authority:    James Crichton  
  
Representatives:         Jon Henning , Labour Inspector,  
   Anthony Hansen for Respondent  
  
Investigation Meeting:    On the papers  
  
Determination:            19 November 2008

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     By statement of problem filed in the Authority on 19 May 2008, the applicant Labour Inspector (Mr Henning) alleges that the respondent company (Vizual Photomedia) is in breach of its obligations under s.229 of the Employment Relations Act 2000 and s.82 of the Holidays Act 2003 in that Vizual Photomedia has failed to provide copies of wage records, time records, holiday records and any employment agreement in respect of its former employee, Mark Sansone.

[2]     The statement of problem filed by Mr Henning catalogues a succession of difficulties in making contact with Vizual Photomedia. In responding to Mr Henning's application to the Authority, Vizual Photomedia contends that its governing director, Mr Hansen, was in the northern hemisphere when Mr Henning was endeavouring to make contact and that Mr Hansen then suffered a *major injury* which included a *broken shoulder and head injury*.

[3] The statement in reply resists Mr Henning's application by contending that, far from owing Mr Sansone money, in fact Mr Sansone owes Vizual Photomedia money. In a supporting letter to the Authority, Mr Hansen further explains the company's position and he sets out in summary form the history of the employment of Mr Sansone.

[4] I convened a telephone conference of the parties on 28 July 2008 at which Vizual Photomedia (through Mr Hansen) undertook to provide the records on which the written summary of the employment of Mr Sansone was based. In that telephone conference, Mr Hansen confirmed that there was no written employment agreement. Despite a follow up reminder from Mr Henning, the material referred to in the directions conference was not provided by Vizual Photomedia.

[5] That being the position, I convened a further telephone conference of the parties on 15 September 2008 and gave the respondent employer yet another opportunity to provide the material requested by the Labour Inspector.

[6] In the result, and within the timeframe that I directed, Vizual Photomedia provided some but not all of the documents sought by Mr Henning. It seemed clear that there were no other documents available.

[7] By email dated 16 September 2008, Mr Henning advised the Authority that the material received would enable the Department (the Department of Labour) to make an assessment of the employee's claim.

[8] By email dated 13 October 2008, the Labour Inspector advised the Authority that it had forwarded an assessment to Vizual Photomedia under cover of a letter dated 24 September 2008 and had not received any response from Vizual Photomedia within the stipulated timeframe.

[9] I then directed that Vizual Photomedia should have 14 days from 14 October 2008 to file with the Authority any submissions it had on the assessment furnished by Mr Henning. No such submissions have been received by the Authority and I now propose to determine the matter on the material before me.

[10] Of course, the nature of the determination now to be made by the Authority is different from that which was originally applied for by Mr Henning in that matters had moved on since the original application was made. In particular, having obtained,

by the drawn out process I have described, the information from Vizual Photomedia, Mr Henning has been able to make a judgment about the entitlement that the former employee has in relation to unpaid wages.

[11] The total amount assessed by Mr Henning as owed by Vizual Photomedia is \$2,432.07 made up of elements of holiday pay, statutory holiday pay and wages, the latter being payable because of an unlawful deduction.

### **Mr Henning's process**

[12] In the present case, Mr Henning has not issued a demand notice within the meaning of s.224 of the Employment Relations Act 2000. He has simply made an assessment of the moneys owed to the former employee, notified the employer of his assessment and sought the employer's response, which has not been forthcoming.

[13] The Authority is asked to enforce that assessment. But I am not satisfied that the provisions in the Employment Relations Act 2000 covering the powers of the Authority to order compliance are sufficiently wide to allow me to direct that Vizual Photomedia pays Mr Henning's assessment.

[14] In order for the matter to be concluded, I must reluctantly refer the matter back to Mr Henning and invite him to issue a demand notice in the statutory form so that the matter can be progressed on that basis.

### **Determination**

[15] While I sympathise with Labour Inspector Henning in his frustration to have this matter resolved, I do not think that I have an inherent power to demand compliance of an assessment which is not framed as a statutory demand notice. It follows that I am unable to assist Mr Henning further until that defect is remedied.

[16] In the meantime, I would urge upon Vizual Photomedia the usefulness of its making some proposal to Labour Inspector Henning to resolve this outstanding matter. Undoubtedly, Mr Henning will serve a demand notice on Vizual Photomedia (in the absence of any response from it), and that demand notice will subsequently be enforced by the Authority unless the employer makes a proposal to resolve the matter by agreement.

[17] I will adjourn the matter to enable Mr Henning to serve a demand notice. Depending on the response of Vizual Photomedia, the Authority will then be ready to conclude the matter appropriately. Also standing adjourned is Mr Henning's application for penalties against Vizual Photomedia. If the employer promptly engages with Mr Henning to resolve the matter on a consensual basis, I will not need to consider penalties, but the converse is also true.

**Costs**

[18] Costs are to lie where they fall.

James Crichton  
Member of the Employment Relations Authority