

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Alex Anthony Leulu (Labour Inspector) (Applicant)

AND Easyframe Limited (Respondent)

REPRESENTATIVES Applicant in person
No appearance for respondent

MEMBER OF AUTHORITY Alastair Dumbleton

INVESTIGATION MEETING 18 March 2005

DATE OF DETERMINATION 29 March 2005

DETERMINATION OF THE AUTHORITY

Application for compliance order

[1] Labour Inspector Mr Alex Leulu has applied for an order under s.137(1)(b) of the Employment Relations Act 2000. Under those provisions the Authority may order compliance with any determination it has previously made in the course of resolving an employment relationship problem.

[2] The determination the Inspector wishes to enforce was issued by the Authority on 22 June 2004 under AA 213/04. It followed the investigation of a claim brought by another Inspector (Mr Colin Jessup) against the above-named respondent Easyframe Ltd. The Inspector had brought the claim to recover holiday pay on behalf of two employees of that company. He also claimed penalties for breach of the Holidays Act 1981, interest on the arrears and costs.

[3] In its determination the Authority (Ms Marija Urlich) recorded that Easyframe had not disputed with the Inspector its liability to pay the holiday pay claimed but had withheld it as a response to an alleged problem with the work of the employees entitled to the money.

[4] The determination also records that a manager and shareholder of Easyframe, Mr Roy Giddens, had subsequently agreed with another Labour Inspector (Ms Muriel Kelly) to pay the outstanding amount. However he reneged on this agreement, apparently because the two employees had raised personal grievances about the termination of their jobs by the company.

[5] After it became necessary for the Inspector to claim the arrears through the Authority, a statement in reply was lodged by Mr Giddens. Although mediation was directed it did not proceed because Mr Giddens failed to attend. Neither did he attend the notified investigation meeting held in June 2004, after which the determination now before the Authority was issued.

[6] To bring to the attention of Easyframe the latest investigation meeting, I directed service of

the Notice upon the company at its registered office and at the address of Mr Giddens. He duly attended the meeting on 18 March 2005. Mr Giddens said he had no relationship with the company as a director or employee or other agent. However he intimated that he still has some pull within the company. The Inspector has taken an opportunity to explore with Mr Giddens this mysterious influence he claimed to retain, but to no avail.

Determination

[7] I am satisfied that there are grounds for making the compliance order as sought. The Inspector has received nothing from the respondent in satisfaction of the June 2004 determination. Mr Giddens suggests that the company has to be paid by its debtors before it will have the money to pay the Inspector, but there is no satisfactory evidence about this.

[8] Accordingly, I order Easyframe Ltd to pay to the Labour Inspector;

- \$1,196 (nett) as holiday pay owed to Mr Mike King and Mr Simon Tidsbury, and
- interest on \$1,196 at 6.5% per annum from 24 December 2002 until 18 March 2005, and
- interest on \$1,196 at 9% from 18 March 2005 per annum until the arrears are paid in full, and
- \$1,000 as penalties for breach of the Holidays Act 1981, and
- \$140, being \$70 costs on the original application and \$70 on this latest one.

[9] Although interest at 9% was not part of the 22 June 2004 determination, the award of the increased rate is ancillary to this compliance order. The additional \$70 costs award is made on the same basis.

[10] The above payments are to be made within 14 days of the date of service of this determination upon the Easyframe Ltd.

[11] Any failure by Easyframe Ltd to comply with the above order may lead to an application by the Inspector to the Employment Court for orders under s.140 of the Act. These may include fines of up to \$40,000, imprisonment for up to 3 months and the seizure of property to pay the amounts specified above in this determination.

[12] In anticipation of the likelihood that further enforcement will become necessary, the Labour Inspector will no doubt consider whether it is desirable for service of this determination to be effected personally by him or by his agent, so that proof of service in the form of an affidavit or oral evidence can be available to the Court.

[13] In addition to service at the registered office of Easyframe Ltd and at the address of any of its directors or other officers, I direct that a copy of the determination is also to be served on Mr Roy Giddens.

A Dumbleton
Member of Employment Relations Authority