

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
ER AUTHORITY AUCKLAND OFFICE**

**BETWEEN** Mathew Steven MacDonald, Applicant  
**AND** Ashley Klenner, Respondent  
**REPRESENTATIVES** Mark Ryan, Counsel for Applicant  
No Appearance by Respondent  
**MEMBER OF AUTHORITY** Yvonne Oldfield  
**INVESTIGATION MEETING** Friday 16 June 2006  
**DATE OF DETERMINATION** 28 June 2006

COMPLIANCE ORDER OF THE AUTHORITY

**Employment Relationship Problem**

- [1] In a determination dated 5 December 2005 I ordered the respondent, Mr Klenner: *"to pay to Mr McDonald the sum of \$31,642.50 gross arrears of wages, holiday pay and payments for statutory holidays."* I ordered Mr McDonald *"to return Mr Klenner's motor vehicle to him as soon as possible."* Because the net value of the Mr Klenner's vehicle was close to the figure he owed Mr McDonald I also recommended that the parties attempt further mediation to see if they could come to any sort of agreement on remedies.
- [2] However, the parties have not resolved matters between them and Mr McDonald has now applied for an order for compliance with my determination.
- [3] Unfortunately (as was the case with the substantive matter) Mr Klenner did not provide a statement in reply. The Authority proceeded to schedule an investigation meeting on 17 May however the applicant was unable to attend and the meeting was rescheduled to Friday 16 June. On that date Mr McDonald attended with his representative but there was no appearance for the respondent. Again, this was what had happened in relation to the substantive matter, and once again, a courier "track and trace" indicated that Mr Klenner had been properly served with the notice of the investigation meeting. I therefore decided to proceed with my investigation despite Mr Klenner's absence.
- [4] Mr Ryan told me that he and his secretary had repeatedly attempted to contact the respondent by phone in order to discuss payment of what was owed to Mr McDonald however they had been unable to obtain any kind of response and Mr Klenner had not returned any of the messages that had been left. Mr Ryan said that as a result he had been instructed to lodge this application for compliance order. Mr Ryan also said that his client sought costs and interest on the arrears of wages.
- [5] I asked Mr McDonald what he had done to comply with the orders I made against him. He told me:
- i. He took the car for an "AA" vehicle information report and "autocheck";
  - ii. He then arranged for NP Towing 2000 Ltd (t/a Express Vehicle Transport,) a car haulage company, to return the car to Mr Klenner. He

supplied the haulage company with Mr Klenner's name and address and asked them to get Mr Klenner to sign for the vehicle. He told me that Express Vehicle Transport had supplied him with documentation confirming delivery;

- iii. Afterwards he had separately couriered the vehicle manual and "mag" lock nuts.

[6] I asked Mr McDonald to provide me with the vehicle information report and autocheck report and with proof of delivery of the vehicle.

[7] He has now done so. The vehicle information report confirmed that the car in question (registration BSN160) did indeed belong to Mr Klenner. The autocheck indicated that the car was due for a service and there were problems with the power steering pump but that otherwise it "was perfect."

[8] As for the haulage company docket, it confirmed that the vehicle was handed over to the haulage company by Mr McDonald on 19 January 2006 and delivered to Mr Klenner on 23 January 2006, although Mr Klenner had not signed for the car. It also shows that Mr McDonald paid \$315.00 for delivery of the car. Finally, Mr McDonald provided me with a "track and trace" from the courier company which had delivered the other items. It indicates that these were delivered on 27 January.

### **Determination**

[9] I am satisfied that Mr McDonald has done everything he could to return Mr Klenner's car to him in good order and so has complied in full with the order against him. Unfortunately, Mr Klenner has not done the same. Mr McDonald is entitled to an order for compliance. Because of the time which has already elapsed and because Mr Klenner has not attempted to discuss this matter with Mr McDonald or the Authority I also consider it an appropriate case for an award of interest. Schedule 2, clause 11 (1) of the Employment Relations Act 2000 provides that:

*"Subject to sub clause (2), in any matter involving the recovery of any money, the Authority may, if it thinks fit, order the inclusion, in the sum for which judgement is given, of interest at such rate not exceeding the 90 day bill rate (as at the date of the order) plus 2% as the Authority thinks fit, on the whole or any part of the money for the whole or any part of the period between the date when the cause of action arose and the date of payment in accordance with the determination of the Authority.*

[10] The 90 day bill rate is currently 7.5%. I therefore make the following orders:

- i. Mr Klenner is ordered to comply with my determination of 5 December 2005 by making payment of the sum he owes to Mr McDonald (\$31,642.50.) within two months of the date of this determination;
- ii. Mr Klenner is also ordered to pay interest on the sum owed from 16 June 2005 until the date of payment, at a rate of 8% per annum.

[11] Mr Ryan has yet to supply me with any information about Mr McDonald's costs. Leave is reserved for him to pursue this issue should he wish to do so.