

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 121/09
File Number: 5274541

BETWEEN Diane Meenken
 Applicant

AND Rigg Zschokke Limited
 Respondent

Member of Authority: Denis Asher

Representatives: Ms Meenken represented herself
 Chris Hurrell for the Company

Investigation Meeting The parties agreed to a determination on the papers

Submissions Received By 19 August 2009

Determination: 28 August 2009

DETERMINATION OF THE AUTHORITY

The Problem

[1] Ms Meenken says the Company is proposing to breach her employment agreement and the Wages Protection Act 1983 by making deductions from her wages without her written consent and despite her explicit notice forbidding such deductions (statement of problem received 24 July 2009).

[2] The Company says it does not want to breach either Ms Meenken's employment agreement or the Wages Protection Act or any other provision

but – after obtaining legal advice – believes it is under a statutory obligation to implement an IRD deduction notice or face severe financial penalty.

- [3] The parties have not undertaken mediation in respect of their problem.
- [4] In a telephone conference on 14 August the parties expressed their preference that the Authority issue a determination on the matter as soon as possible, particularly as the deductions are to commence from 20 August 2009.
- [5] During the conference I expressed preliminary views based on the parties' papers then to hand but stressed my mind was open to further submissions and evidence.

Applicant's Position Summarised

- [6] In her statement of problem and submissions filed on 19 August 2009 Ms Meenken says, amongst other things, that the Company is acting on an unsigned notice (document 1, statement of problem): it is therefore a nullity.
- [7] The IRD is not party to her employment agreement with the Company.
- [8] Ms Meenken has put in writing to the Company (doc 6, above) her opposition to its expressed intention to implement the IRD notice.
- [9] Ms Meenken says she is releasing the Company from its obligation to pay her wages "*conditional upon the amount being credited instead to an account standing in my name*" (doc 6, above).
- [10] Ms Meenken also relies on the "*Maxim of Equity; the workman is worthy of his hire*" (par 3, statement of problem), the Wages Protection Act, s. 131 of the Employment Relations Act 2000 as well as other authorities.

The Company's Position Summarised

- [11] The respondent's position is set out in par 2 above.

Discussion and Findings

- [12] Ms Meenken is unable to contract out of the statutory obligation on the Company to pay her wages; besides, the money that Ms Meenken proposes be credited to an account standing in her name is simply wages under another name.
- [13] The Company is not initiating deductions, rather – after taking advice – it is implementing a direction of the IRD that it believes to be statutorily sound, one that otherwise overrides accepted obligations under the Wages Protection Act, etc and which imposes the risk of severe financial sanction if it is not implemented.
- [14] Section 157 of the Tax Administration Act 1994 provides the Inland Revenue Commissioner with the power to, *“from time to time by notice require any person to-*
- (b) *... deduct ... from time to time, by way of instalment, from any amount that is ... payable in relation to the taxpayer such sum”*
- [15] Sub-section 157 (7) of the same Act provides that, *“any person making any deduction ... in accordance with a notice under this section shall be deemed to have been acting under the authority of the taxpayer”*
- [16] Attached to the statement of problem is a *“Change to deduction notice”* that purports to have been issued by IRD. The notice is letterheaded and a name and 0800 contact number inviting questions have been provided. There is no evidence to the effect that the notice is not genuine.
- [17] Because of the provisions of the Tax Administration Act set out above I am satisfied that the Company is obliged to effect the deductions on behalf of IRD, that it enjoys the statutory protection of being deemed to act under Ms Meenken’s authority and therefore is not in breach of the Wages Protection Act.
- [18] Any issue Ms Meenken has about the deduction is, I suggest, best pursued with IRD.

Determination

[19] Ms Meenken's application for an order preventing the Company from effecting an IRD notice of deduction is declined.

[20] Costs are reserved.

Denis Asher

Member of the Employment Relations Authority