

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 43/10
5292918

BETWEEN GARRY NEAL MILES
 Applicant

AND ANZI DAIRY FOODS
 LIMITED
 Respondent

Member of Authority: P R Stapp

Representatives: Garry Miles in person
 Brendan Marshall for Respondent

By telephone: 2 March 2010

Determination: 2 March 2010

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The employment relationship problem is about Mr Miles being paid by his employer ANZI Dairy Foods Limited. He has claimed unpaid wages.

[2] The respondent has not denied owing the outstanding sum of wages.

Consideration of mediation under s 159 of the Employment Relations Act

[3] Pursuant to s 159 of the Employment Relations Act I considered mediation. The parties had not been to mediation. I reached the view that mediation would not contribute constructively to resolve the matter because of the positions taken by both parties, that money was owing and that in the short term there might be difficulties in Mr Miles obtaining the sums he is owed and the company going in to liquidation. The company is endeavouring to get funds to pay staff wages and salaries.

Issues

[4] How much is Mr Miles owed by ANZI Dairy Foods Limited? Should the Authority make an order for the payment?

The facts

[5] Mr Miles was employed by ANZI Dairy Foods Limited as a factory manager from 21 September 2009. He has waited for payment, tried to resolve the problem and wants to be paid before any liquidation.

[6] ANZI accepted that Mr Miles was an employee. It has accepted that his annual salary was \$70,000pa. Also, it accepts that Mr Miles has not been paid anything since his start date for the claim.

Determination

[7] The company says that it does not have the funds to pay Mr Miles. It says it expected money from a shipment that did not eventuate. The company apparently is trying to get more capital investment and plans to restructure. Another option being considered is alternative financing arrangements.

[8] I conclude that the company maybe able to pay sometime in the future because of the arrangements being explored. It is therefore appropriate that I make an order and any enforcement of the order is a matter for Mr Miles to consider.

[9] I calculate that Mr Miles is owed 23 weeks salary from the date he started work on 21 September 2009 until the date of the Authority's telephone conference on 2 March 2010. I calculate the sum owing is \$30,961.53 wages¹.

¹ Calculation made on \$70,000pa divided by 52 to get the weekly pay (\$1,346.15 times 23 weeks from 21 September 2009 until 2 March 2010).

Orders of the Authority

[10] I order ANZI Dairy Foods Limited to pay Garry Neal Miles \$30,961.53 wages.

[11] Orders relating to annual holiday pay and any further wages are reserved. I have recalculated the pay and the figure in this order, which differs from the figure discussed with the parties during the telephone conference. I am satisfied it is now the correct figure. Any request for a variation to this order is reserved on application from either party.

[12] I order ANZI Dairy Foods Limited to pay Garry Neal Miles the \$70 filing fee.

P R Stapp
Member of the Authority