

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 364
5457728

BETWEEN DAVID MYATT (LABOUR
INSPECTOR)
Applicant

A N D ZEFIRO CATERING
LIMITED
Respondent

Member of Authority: James Crichton

Representatives: Applicant in person
No appearance for the Respondent

Investigation Meeting: On the papers

Date of Determination: 1 September 2014

SECOND DETERMINATION OF THE AUTHORITY

History

[1] By determination dated 28 February 2014, I granted compliance with an Improvement Notice served by the applicant Labour Inspector (Mr Myatt) on the respondent (Zefiro) and required payment of the wages due and owing in that Improvement Notice to be made within 28 days of the date of the determination. Interest was also to be paid together with the reimbursement of the Authority's filing fee of \$71.56.

[2] Leave was reserved in that determination for Mr Myatt to make a further application for the imposition of a financial penalty if the payments contemplated by the Improvement Notice were not attended to within time.

[3] The present application before the Authority is a consequence of Zefiro's complete failure to fulfil the obligations it has in terms of Mr Myatt's Improvement Notice for which compliance was ordered in my earlier determination.

Employment relationship problem

[4] Mr Myatt seeks a penalty against Zefiro for its failure to fulfil its obligations under the Improvement Notice for which compliance was ordered in the Authority's first determination dated 28 February 2014.

[5] There has been no response whatever from Zefiro. Zefiro has failed to engage in any way with the Authority's process. This is so notwithstanding the fact that service of the appropriate documentation on Zefiro was effected.

[6] For the avoidance of doubt I observe that Zefiro, while a registered New Zealand company and remaining so registered, has its sole director now resident overseas.

[7] Accordingly, by order made on 28 April 2014, I approved service on Zefiro overseas and I am satisfied that was attended to on Mr Myatt's behalf on 2 May 2014 at 6.01pm.

[8] Notwithstanding its receipt of the Statement of Problem relating to the present application, there has been no response. Given the efficacy of service, I am satisfied it is appropriate for the Authority to proceed to make orders.

Determination

[9] I am satisfied that Zefiro has simply ignored its obligations in this matter, first by failing to respond to the Improvement Notice issued by the Labour Inspector, second by ignoring the compliance order in respect of that Improvement Notice, and third by now ignoring the Statement of Problem in respect of the present application to impose a penalty for the earlier failures just traversed.

[10] By s.135(4B) of the Employment Relations Act 2000 (the Act), the Authority "*must consider whether the person against whom the penalty is sought has previously failed to comply with an Improvement Notice issued under s.223B*". That is precisely the position here.

[11] Zefiro is a limited liability company still registered in New Zealand which has completely ignored its obligations in terms of the Improvement Notice served on it by Mr Myatt. That Improvement Notice concerned payment of wages due and owing to a former employee.

[12] The Inspector has then been put to the trouble and expense of seeking compliance with that Improvement Notice (again ignored by Zefiro) and Mr Myatt now seeks a penalty for the failure of Zefiro to meet its obligations.

[13] I am satisfied that the Authority ought to impose a penalty in the present case and having regard to the history of the matter think that the appropriate figure to impose is in the sum of \$8,000. In reaching that conclusion, I have had regard to decided cases, especially *Xu v McIntosh* [2004] 2ERNZ 448 and *Tan v Yang & Zhang* [2014] NZEmpC 65.

[14] Zefiro is directed to pay that sum to the Authority for the credit of the Crown Bank Account.

James Crichton
Member of the Employment Relations Authority