

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 70
5432797

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 Respondent

Investigation Meeting: On the papers

Date of Determination: 28 February 2014

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant Labour Inspector (Mr Myatt or the Labour Inspector) alleges that the respondent (Zefiro) has failed to comply with the improvement notice served on it pursuant to s.223D of the Employment Relations Act 2000 (the Act).

[2] Pursuant to s.223E of the Act, an employer served with an improvement notice has 28 days to lodge an objection to that notice in the Authority. No such objection was filed in the instant case by Zefiro.

[3] In terms of s.223D(6) of the Act, a Labour Inspector may enforce the terms of an improvement notice by seeking compliance with the notice under s.137 of the Act. That is the relief that the Labour Inspector seeks in the instant case.

[4] As the Authority has already noted, Zefiro has failed to engage, not only with the Labour Inspector, but also with the Authority in its investigation.

[5] When the matter was first filed in the Authority, Zefiro was a limited company with a registered office in New Zealand and with a sole director who, according to the Companies Office website, was also resident in New Zealand. A statement in reply was sought in the usual way.

[6] In late September 2013, the Authority was advised that the sole director of Zefiro was now resident in Australia. Accordingly, an application was made by the Labour Inspector for permission to serve the proceedings overseas and that was granted by the Authority on 26 September 2013 in reliance on Schedule 2 clause 4A of the Act and in reliance on Reg.19A of the Employment Relations Authority Regulations 2000 which refers to Form 8.

[7] The Authority is satisfied on the evidence before it on the file that service on the director of Zefiro was effected on 8 October 2013 at his Australian address.

[8] Notwithstanding that, no engagement with the Authority's process has been occasioned since that date.

[9] The Authority is satisfied that Zefiro has had ample opportunity to engage in this matter but has simply chosen to ignore it. As a consequence, the Authority is satisfied that it can proceed to determine the matter.

[10] The effect of the very detailed and admirably documented application by the Labour Inspector may be briefly summarised here. A complaint was received by Mr Myatt in respect to a former employee of Zefiro and as a consequence, the Labour Inspector undertook inquiries which led to what are described in Mr Myatt's investigation report as "manifold areas of noncompliance" with "minimum standards employment legislation".

[11] However, Zefiro refused to acknowledge the breaches, the business was sold as a going concern, and Zefiro indicated it had no future intention of employing staff.

[12] On that basis, Mr Myatt very sensibly sought only to obtain the outstanding unpaid wages due to the original complainant from Zefiro. The sum owing is \$1,518.50 being outstanding wages owed by Zefiro to Ms Natalie Morine.

[13] The terms of the improvement notice required that payment to be made to the Labour Inspector by 11 September 2013. No such payment was received. As a consequence, the present proceedings for compliance were issued.

Determination

[14] The Authority is satisfied that the Labour Inspector has made out a case for the granting of a compliance order in this matter. Accordingly, the Authority now directs that Zefiro Catering Limited is to make payment either by bank cheque drawn on a New Zealand registered bank or by international money transfer of the sum of NZ\$1,518.50 and that payment is to be made to the Ministry of Business Innovation and Employment within 28 days of the date this determination is served on Zefiro;s sole director.

[15] Zefiro is also to pay interest on the outstanding sum at the rate of 4 per centum per annum calculated from 11 September 2013 (the date payment should have been effected in terms of the improvement notice) down to the eventual date of payment.

[16] Zefiro is also to pay to the Labour Inspector the sum of \$71.56 being the Authority's filing fee.

[17] Payments of interest and the Authority's filing fee are to be made within 28 days of service of this determination on the director of Zefiro.

[18] A certificate of determination is to issue detailing the orders made herein.

[19] In the event that Zefiro fails to comply with the Authority's orders, leave is reserved for the Labour Inspector to further apply to the Authority for the imposition of a financial penalty against Zefiro.

James Crichton
Member of the Employment Relations Authority