

company totalling \$9,000, and unpaid wages of \$3,000 by Pacific Horticulture Services Limited (PHSL).

- [2] The NZ Companies Office view details record the respondent's director as Kashmir Singh. Mr Singh is also a joint share holder (50) along with Amarjeet Kaur. Mr Singh's given address – 108 Flaxmere Ave, Hastings – is also the recorded as the respondent's registered office and its address for service.
- [3] The NZ Companies Office view details record PHSL as being in liquidation. Its director is recorded as Kashmir Singh. Mr Singh is also a joint share holder (50) along with Amarjeet Kaur. Mr Singh's given address is this time recorded as 109 Flaxmere Ave, Hastings. PHSL's registered office and address for service are listed as Cary Mossman Ltd, Chartered Accountant, 206 W Lyndon Road, Hastings.
- [4] In his statement of problem Mr Nauhria sought an urgent intervention by the Authority as he believed Mr Singh intended selling the business operated by Krish Liquor Limited and leaving the country.
- [5] A copy of the statement of problem was forwarded to the respondent, Krish Liquor Limited, at the address provided by Mr Nauhria (23 Swansea Road, Flaxmere Shopping Centre, Flaxmere, Hastings). The track and trace record shows that it was delivered on 31 July 2008 and was signed for by "*K Liquor*".
- [6] No statement in reply has been received from Krish Liquor Limited, or from PHSL or Mr Singh.
- [7] The parties have not undertaken mediation.
- [8] Acting on the applicant's information that Mr Singh's wife, Ms Amarjeet Kaur, was operating the Krish Liquor Limited shop Authority support staff telephoned the shop and attempted unsuccessfully to speak to Ms Kaur.
- [9] On 12 August "*Bunty*" (name given by caller) telephoned the Authority's Wellington office advising she was calling on Ms Kaur's behalf, that Ms Kaur could not speak English and a 2-week extension was sought as the owner would be back by then.

- [10] Further efforts by Authority to telephone Ms Kaur and Bunty up to 18 August were unsuccessful. No further contacts have been made with any representatives of the companies, the respondent in particular or Mr Singh.
- [11] On 18 August I was satisfied from the service of the statement of problem and the response to it that it was appropriate to set this matter down for an investigation on Monday 1 September 2008 in Napier: s. 160 of the Employment Relations Act 2000 applied.
- [12] Notice of the 1 September 2008 investigation, identifying Krish Liquor Limited as the respondent, was sent to the respondent's address for service, i.e. 108 Flaxmere Ave, Hastings: it was signed for by, verbatim, "*Flamere Liquor*" (refer to the track and trace record provided by fax on 19 August). Notice was not sent separately to PHSL or to Mr Singh.
- [13] There was no appearance by or for the Krish Liquor Limited at the Authority's investigation in Napier on 1 September. In light of proper notice having been given, and the respondent's failure to co-operate with the Authority's investigation to date, I was satisfied it was appropriate to continue with the Authority's investigation: Clause 12 of Schedule 2 of the Act applied.

Applicant's Evidence

- [14] During the Authority's investigation, and as set out in his statement of problem, Mr Nauhria affirmed that he had worked for Mr Singh and his two companies, and that it was agreed he would be paid \$1,000 weekly, after tax.
- [15] Mr Nauhria explained that he and his partners sold Krish Liquor to Mr Singh, that the latter had financial problems, that wages owing were not paid on time to the applicant and that he – Mr Nauhria – had advanced monies by way of credit card purchases on behalf of the companies and Mr Singh so that they could make stock purchases.
- [16] Mr Nauhria said he was not employed by way of a written employment agreement; wages were paid by way of cash payments and no pay slips were provided.

- [17] As set out in his statement of problem, Mr Nauhria reiterated that he was owed unpaid wages of \$7,600 by Krish Liquor, for the period 2 October 2007 to 30 May 2008 inclusive, unpaid wages of \$3,000 by PHSL for the period 18 February to 31 April 2008 inclusive and monies advanced to the companies and Mr Singh of \$9,000.
- [18] Mr Nauhria was not aware of Mr Singh's current location.

Discussion and Findings

- [19] As is made clear above, there has been no appearance at any time by or for the respondent, the other company or Mr Singh.
- [20] The applicant does not have the liquidators' approval to bring a claim against PHSL or that of the High Court: s. 248 of the Companies Act 1993.
- [21] I have no reason to question the veracity of Mr Nauhria's claim for wages against the respondent, PHSL (now in liquidation) or Mr Singh. However, there is a statutory bar against Mr Nauhria's claim in respect of PHSL; notice was any way not served on that Company and its liquidators of these proceedings, and notice has also not been personally served on Mr Singh.
- [22] I make the observation that, on the facts currently before the Authority, Mr Nauhria's employers appeared to be the respondent, PHSL and Mr Singh. I reach that conclusion because of the absence of a written employment agreement and the evidence of Mr Singh paying the applicant and the latter undertaking work for (and loaning monies to) both companies as well as Mr Singh. It is for the applicant to decide whether he will seek to amend his application.

Determination

- [23] For the reasons set out above I am satisfied that Mr Nauhria has made out his claim against the respondent, Krish Liquor Limited, for unpaid wages of \$7,600 (seven thousand six hundred dollars) nett and also for unpaid monies of \$9,000 (nine thousand dollars) nett: s. 123 (1) (b) of the Act applied. The Company is directed to pay those sums to the applicant.

[24] Subject to meeting statutory requirements including those of notice, leave is reserved to Mr Nauhria in respect of bringing claims against PHSL and Mr Singh personally.

[25] Costs are reserved.

Denis Asher

Member of the Employment Relations Authority