

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 56/09
5125954

BETWEEN Fred Orr
Applicant

AND Robinson Horticulture Limited
Respondent

Member of Authority: Denis Asher

Representatives: Deirdre Orr for the applicant
No appearance by or for the company

Investigation Meeting Napier, 5 May 2009

Determination: 6 May 2009

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] In a statement of problem filed with the Authority on 3 June 2008 Mr Orr claimed unpaid wages, annual leave and *“full payment of all unpaid monies owed”*.

[2] The Company has not filed a statement in reply.

Background

- [3] By letter dated 14 May 2008 one of the Company's directors, Tim Robinson, advised Mr Orr that the respondent was:

... unable to pay wages for the week ending 4/05/08. Sadly I felt that I had no option on the 2/5/08 but to shut down the operation, realizing that I was not going to receive outstanding funds that are owed to the company.

I want to let you know that I have processed the timesheets for week ending 4/05/08 as I recognize the work has been done.

...

I will keep you informed of any changes to the financial position of the company.

(attachment to statement of problem)

- [4] In a telephone conversation with an Authority support staff on 15 July 2008 Mr Robinson confirmed his availability for a telephone conference call, that there was no dispute, but that the company was 'financially busted apart' and that he had no assets to sell.
- [5] During the 23 July 2008 telephone conference Mr Robinson agreed the situation was 'traumatic for everyone' and that he would get hold of Mr Orr to try and sort out the problem.
- [6] Ms Orr confirmed the parties met subsequently but, other than Mr Robinson setting up another business, nothing had happened.
- [7] In a telephone conversation with an Authority support staff on 29 January 2009 Mr Robinson confirmed his availability for another conference call, advised of his mobile phone number and his new address.
- [8] Despite confirming his availability for a conference call on 9 February Mr Robinson did not answer his telephone. I elected to proceed with the conference and directed this problem to an investigation in Napier on Tuesday 5 May 2009: s. 160 of the Employment Relations Act 2000 applied.

Today's Investigation

[9] Nobody appeared on behalf of the Company during today's investigation. I attempted to telephone Mr Robinson twice at the commencement of, and during, the investigation but was only able to leave a recorded message. I was satisfied, per clause 12, Schedule 2 of the Act, that it was appropriate to proceed with the investigation because:

- a. Mr Robinson participated in the 23 July 2008 telephone conference during which he acknowledged the applicant's claim, and was informed of the process the Authority would follow if Mr Orr's claim was not settled;
- b. Support staff spoke to Mr Robinson by telephone on 9 February when he was advised the problem had been set down for an investigation on 5 May; and
- c. Notice of today's investigation was forwarded to the domestic address provided by Mr Robinson.

[10] At today's investigation Mr Orr affirmed he was seeking to recover the following monies:

\$

| | |
|---------------------------|-----------------|
| One week's pay: | 603.35 (nett) |
| 23 days' holiday pay: | 3,620.10 (nett) |
| Items sold to respondent: | 1,870.00 |
| Filing fee: | 70.00 |
| Total | 6163.45 |

[11] Mr Orr confirmed his written employment agreement was with the Company, and his bank statement confirmed that wages were paid to him by the respondent.

Discussion

[12] As is made clear above, Mr Orr's claims for *all unpaid monies owed*" (above) are not challenged by the respondent. There has clearly been a default by the Company in respect of wages and other money owed by it to Mr Orr.

[13] I am therefore satisfied it is appropriate to award all of the monies sought by the applicant, as set out in paragraph 14 below.

Findings

[14] The Company is in default of its obligations to pay Mr Orr the following monies:

| | \$ |
|---------------------------|-----------------|
| One week's pay: | 603.35 (nett) |
| 23 days' holiday pay: | 3,620.10 (nett) |
| Items sold to respondent: | 1,870.00 |
| Filing fee: | 70.00 |
| Total | 6163.45 |

Determination

[15] The Company is to pay to Mr Orr the monies set out in paragraph 14 above.

[16] Costs are reserved.

Observation

[17] The Company remains listed by the NZ Companies Office. According to that record, other companies are being operated by Mr Robinson. The outstanding monies owed Mr Orr require prompt payment as the applicant is

clearly, and properly so, determined to pursue what is rightfully his. Interest payments may soon be added to the outstanding sum. Ultimately, a defaulter faces the risk of fines, imprisonment and sequestration of property. The sooner the Company reaches a fair agreement to repay in full or by drip feed what it owes the applicant the sooner it will avoid these risks.

Denis Asher

Member of the Employment Relations Authority