

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 349/08
5131809

BETWEEN DONALD PACKWOOD
First Applicant
RUSSELL PONT
Second Applicant

AND PEACE INDUSTRIES 2007
LIMITED
Respondent

Member of Authority: Marija Urlich

Representatives: David Collins, for Applicant
No appearance for the Respondent

Investigation Meeting: 30 September 2008

Further information received: 7 October 2008

Determination: 9 October 2008

DETERMINATION OF THE AUTHORITY

[1] On 27 May 2008 the parties agreed that a mediator would decide the matters at issue to resolve their employment relationship problem¹. On 12 June 2008 the mediator made those decisions².

[2] Mr Packwood and Mr Pont seek compliance orders requiring Peace Industries to comply with the mediator's decisions. They also seek a contribution to costs of \$150.

[3] Peace Industries' statement in reply accepts it has not complied with the mediator's decisions. It says it has not complied because it is not in a financial

¹ Pursuant to section 150(1) Employment Relations Act 2000

² Pursuant to section 150 Employment Relations Act 2000

position to do so and that its director is attempting to find some way to meet its obligations to Mr Packwood and Mr Pont.

[4] No one from Peace Industries was present at the scheduled start of the investigation meeting. Shortly after the scheduled start-time a support officer contacted Peace Industries at the telephone number provided on the statement of reply. She was advised that Peace Industries' director, Peter Baird, was in Christchurch that day.

[5] I am satisfied that Peace Industries was properly served with the notice of investigation meeting and had a fair opportunity to attend the scheduled investigation meeting. On that basis the meeting proceeded.

The mediator's decision

[6] There are two mediator's decisions both dated 12 June 2008; one relating to Mr Packwood and one to Mr Pont. Mr Packwood's provides:

That the employer will pay eight weeks wages (applicable taxes deducted) which remain unpaid and will pay all accrued annual leave owing to Donald Packwood within 7 days of this decision.

The employer will also pay to Donald Packwood the compensatory sum of \$3,800.00 (three thousand eight hundred dollars), without deduction, under the provisions of s123(1)(c)(i) of the Employment Relations Act 2000. This payment will be made within 14 days of the date of this decision.

[7] Mr Pont's provides:

That the employer will pay eight weeks wages (applicable taxes deducted) which remain unpaid and will pay all accrued annual leave owing to Russell Pont within 7 days of this decision.

The employer will also pay to Russell Pont the compensatory sum of \$3,700.00 (three thousand eight hundred dollars), without deduction, under the provisions of s123(1)(c)(i) of the Employment Relations Act 2000. This payment will be made within 14 days of the date of this decision.

[8] The mediator's decisions records, by way of background, that the parties agreed on the following terms during the course of the mediation:

- *The discussions and agreement reached will remain strictly confidential to the parties;*

- *The respondent's representative Peter Baird will advise the mediator of progress regarding payment for [Donald Packwood's/Russell Pont's] claim;*
- *The employer will write a letter indicating that [Donald Packwood's/Russell Pont's] employment has been terminated as of 3rd April 2008 on the grounds of redundancy;*
- *The employer will provide [Donald Packwood/Russell Pont]with a statement of service;*
- *Payment of wages and annual leave will be paid separately from any compensation payment.*

[9] These terms are not recorded in a record of settlement³. They do not form part of the mediator's decision. They are unenforceable.

Determination

[10] I am satisfied that the parties consented to a mediator deciding the issues between them, that the mediator made decisions on those issues and that the respondent has not complied with those decisions.

[11] The following orders are made:

- (i) Peace Industries 2007 Limited is ordered to comply with the mediator's decision as it relates to Donald Packwood within 21 days of the date of this determination;
- (ii) Eight weeks wages for Mr Packwood is quantified at \$5,844.64 (net);
- (iii) Peace Industries 2007 Limited is ordered to comply with the mediator's decision as it relates to Russell Pont within 21 days of the date of this determination;
- (iv) Eight weeks wages for Mr Pont is quantified at \$5,693.44 (net); and
- (v) Peace Industries 2007 Limited is to pay Mr Packwood and Mr Pont \$150 by way of costs

Marija Urlich

Member of the Employment Relations Authority

³ Pursuant to section 149 Employment Relations Act 2000