

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 41
5393790

BETWEEN MAURICE PAEWHENUA
Applicant
A N D I ENGINEERING LIMITED
Respondent

Member of Authority: James Crichton
Representatives: Joanne Cairns, Advocate for Applicant
No appearance for Respondent
Investigation Meeting: 31 January 2013 at Auckland
Date of Determination: 4 February 2013

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Mr Paewhenua) alleges both an unjustifiable dismissal and an arrears of wages claim. No statement in reply was filed by the respondent (i Engineering).

[2] Mr Paewhenua was dismissed on 23 April 2012. Mr Paewhenua alleges that that dismissal was unjustified. Of more immediate moment though was the failure by i Engineering to pay Mr Paewhenua the outstanding wages owed to him amounting to \$3,237.58.

[3] Mr Paewhenua says that there was an agreement between himself and the principal of i Engineering (Mr Tau) that all outstanding wages would be paid by 1 May 2012. Payment was not forthcoming and Mr Paewhenua proposed mediation through the Department of Labour. That was rejected by Mr Tau, allegedly on the basis that he had a business to run and could not attend mediation and was seeking advice on the matter.

[4] Given what amounted to a refusal to engage, Mr Paewhenua decided to get some advice and he engaged Ms Cairns to act for him.

[5] Ms Cairns prepared a memorandum of agreement between Mr Paewhenua and i Engineering. That agreement was signed by both parties but was never signed by a mediator employed by the Department of Labour despite Ms Cairns' attempts to have that aspect appropriately progressed.

[6] In the result, Mr Tau made one payment of \$1,500 in reduction of the debt but made no further payments.

[7] Mr Paewhenua's evidence is that when pursued for further payments, i Engineering sought additional time to pay and reduced progress payments but despite concessions being made, there were no further payments on account.

[8] Because payments from i Engineering dried up in their entirety, the matter was filed in the Employment Relations Authority.

[9] The investigation meeting proceeded without i Engineering being represented. The Authority was satisfied that the meeting could commence because of the efforts made by the Authority's support staff in drawing to i Engineering's attention its obligations in the matter. In the result, immediately after the meeting started, the Authority was contacted by telephone from i Engineering and Mr Tau indicated his willingness to engage with the Authority Member by telephone but was not able to be present for the meeting itself.

[10] On that basis, the Authority proceeded to take the evidence of Mr Paewhenua and subsequently spoke by telephone with Mr Tau. Mr Paewhenua told the Authority that his principal concern was the payment of the wages arrears owed to him by i Engineering together with reimbursement of the fees he had paid to Ms Cairns for her assistance in engaging with i Engineering. On the footing that those two sums were paid promptly, Mr Paewhenua was of a mind to withdraw his claim for unjustified dismissal.

[11] On that basis then, when the Authority spoke with Mr Tau subsequently, the suggested basis for resolution of the matter was the payment of the outstanding wage arrears (which had never been denied by i Engineering) together with the payment of the costs incurred by Mr Paewhenua in pursuing i Engineering for the unpaid wages.

[12] When the Authority spoke to Mr Tau for i Engineering, it was indicated that if a regime of repayment of the arrears plus the legal costs was undertaken by i Engineering, then the unjustified dismissal claim would be withdrawn by Mr Paewhenua but that if

there were default in any repayment imposed by the Authority, the unjustified dismissal claim would be brought on for hearing again immediately by Mr Paewhenua. Mr Tau indicated that he was prepared to proceed on that basis provided that if he was unsuccessful in meeting the repayments imposed by the Authority and the unjustified dismissal claim was brought on for hearing, he was able to attend and give evidence in rebuttal. The Authority readily accepted that that was no more than i Engineering's entitlement, but expressed the hope that that would not be necessary.

Determination

[13] On that basis then, this determination concerns only the outstanding wage arrears owed to Mr Paewhenua and the costs that he incurred in attempting to recover his money from i Engineering. Should the unjustified dismissal claim need to proceed on the basis set out earlier in this determination, that will be the subject of a second determination after a further investigation meeting.

[14] i Engineering is ordered to pay to Mr Paewhenua the total sum of \$4,800.98 being \$3,237.58 of wage arrears and \$1,563.40 of fees paid by Mr Paewhenua to Ms Cairns. That payment is to be made in monthly instalments, the first such payment commencing 30 days from the date of this determination and then regularly thereafter on the anniversary date of this determination with each payment comprising a minimum of \$1,000 until the total sum has been paid in full.

[15] On the basis that i Engineering complies with that order without deviation, Mr Paewhenua has indicated his intention to withdraw his unjustified dismissal claim and, forthwith on all payments being received by Mr Paewhenua, he will notify the Authority of that fact and of the withdrawal of the unjustified dismissal claim.

[16] In the event that i Engineering fails to meet its obligations in terms of this order of the Authority, Mr Paewhenua will forthwith advise the Authority of that failure and the Authority will promptly take steps to set the deferred unjustified dismissal claim down for investigation.

James Crichton
Member of the Employment Relations Authority