

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**[2015] NZERA Auckland 319  
5569024**

BETWEEN

RICCARDO PASQUETTI  
First Applicant

IPPOLITA BABINI  
Second Applicant

MATTIA BERTAMINI  
Third Applicant

AND

KHMELEVS PROPERTY LTD  
Respondent

Member of Authority: Eleanor Robinson

Investigation Meeting: On the Papers

Determination: 12 October 2015

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] On 7 July 2015 Records of Settlement were signed under s. 149 of the Employment Relations Act 2000 (the Act). The parties to the Records of Settlement were the Applicants, Mr Riccardo Pasquetti, Ms Ippolita Babini, and Mr Mattia Bertamini (the Applicants), and the Respondent, Khmelevs Property Ltd (Khmelevs). The Records of Settlement were signed by the Applicants and Mr Alex Bushe, Manager, on behalf of Khmelevs. The Records of Settlement was also signed by a Mediator employed by the Ministry of Business, Innovation and Employment.

[2] The issue which had been brought before the Authority by the Applicants is that the Respondent has not complied fully with clauses 2, 3 and 4 of the Records of Settlement, which state in respect of Mr Pasquetti:

*2. Khmelevs Property Ltd shall pay the following to Riccardo Pasquetti by way of direct credit:*

- a) *Wages amounting to \$2,444 (net)*
  - b) *Holiday pay of 8% on gross earnings for the period of Riccardo's employment with Khmelevs Property Ltd;*
  - c) *Any public holiday pay owing (if any)*
  - d) *Reimbursement of the cost of Riccardo obtaining a visa (\$165) and a general medical certificate (\$270)*
3. *The amounts set out in paragraph 2 above will be repaid at the amount of \$150 per week every Monday, starting on Monday 13 July 2015, until the above sums are repaid in full.*
4. *Khmelevs Property Ltd will pay all PAYE on Riccardo Pasquetti's earnings to the Inland Revenue Department within one month of the date of this agreement.*

[3] The Record of Settlement in respect of Ms Babini stated:

- Khmelevs Property Ltd shall pay the following to Ippolita Babini by way of direct credit:*
- e) *Wages amounting to \$1800 (net)*
  - f) *Holiday pay of 8% on gross earnings for the period of Ippolita's employment with Khmelevs Property Ltd;*
  - g) *Any public holiday pay owing (if any)*
3. *The amounts set out in paragraph 2 above will be repaid at the amount of \$150 per week every Monday, starting on Monday 13 July 2015, until the above sums are repaid in full.*
4. *Khmelevs Property Ltd will pay all PAYE on Ippolita Babini's earnings to the Inland Revenue Department within one month of the date of this agreement.*

[4] The Record of Settlement in respect of Mr Bertamini stated:

*Khmelevs Property Ltd shall pay the following to Mattia Bertamini by way of direct credit:*

*h) Wages amounting to \$775 (net)*

*i) Holiday pay of 8% on gross earnings for the period of Mattia's employment with Khmelevs Property Ltd;*

*j) Any public holiday pay owing (if any)*

*3. The amounts set out in paragraph 2 above will be repaid at the amount of \$150 per week every Monday, starting on Monday 13 July 2015, until the above sums are repaid in full.*

*4. Khmelevs Property Ltd will pay all PAYE on Mattia Bertamini's earnings to the Inland Revenue Department within one month of the date of this agreement.*

[5] Settlement was certified under s 149 of the Act by the Mediator. That certification confirmed that before making the agreement, the parties were advised and accepted they understood the agreed terms:

- a. were final, binding and enforceable; and
- b. could not be cancelled; and
- c. could not be brought before the Authority or the court for review or appeal, except for the purposes of enforcing those terms.

[6] Mr Bushe on behalf of Khmelevs stated that the Respondent has made partial payments of the sums of monies set out in the Records of Settlement, and that full repayment would occur on or before by 1 June 2015.

[7] The Applicants state that they have received no payments of the sums set out in clause 2 of the Records of Settlement and the Applicants are now seeking orders for compliance from the Authority.

## **Note**

[8] The Respondent filed a Statement in Reply on 8 May 2015, but did not attend the case management conference call which took place on 15 September 2015, although the Receivers for Khmelevs had agreed to forward all correspondence to it. Khmelevs is properly listed as a registered company on the Companies Office website.

[9] Notification of the case management conference call was duly forwarded to the Respondent; however the Respondent made no contact with the Authority and did not participate in the case management conference call on 15 September 2015.

[10] Following the case management conference, a communication from the Authority confirming arrangements to hear the matter on the papers was served at the Registered Office of the company at 9.31 a.m. on 16 September 2015. No response was received from the Respondent.

[11] Given the difficulties encountered in progressing this case, I was satisfied that no good cause had been shown for Khmelevs' failure to participate in the process and I consequently proceeded with the Investigation Meeting pursuant to clause 12 of Schedule 2 of the Act.

## **Compliance Order**

[12] I am satisfied that the Respondent has not complied with the terms of the Records of Settlement.

[13] From the evidence available to the Authority, I am satisfied that the Respondent has breached clauses 2 and 3 of the Records of Settlement in their totality

[14] I determine that the Respondent has failed to comply with clauses 2 and 3 of the Records of Settlement.

[15] **In order to effect compliance with clauses 2 of the Settlement, I therefore order Khmelevs to pay Mr Pasquetti, no later than 14 days from the date of this determination, the outstanding amounts under clause 2 of the Record of Settlement, these being:**

- i) **Wages in the sum of \$2,444 (net);**

- ii) Holiday of 8% on gross earnings for the period of Riccardo's employment with Khmelevs; and**
- iii) Any public holiday owing (if any); and**
- iv) Reimbursement of the cost of Riccardo obtaining a visa (\$165) and a general medical certificate (\$270).**

**[16] In order to effect compliance with clause 4 of the Record of Settlement, Khmelevs is to pay all PAYE on Mr Pasquetti's earnings to the Inland Revenue no later than 14 days from the date of this determination.**

**[17] In order to effect compliance with clause 2 of the Record of Settlement, I therefore order Khmelevs to pay Ms Babini, no later than 14 days from the date of this determination, the outstanding amounts under clause 2 of the Record of Settlement these being:**

- i) Wages in the sum of \$1800 (net);**
- ii) Holiday of 8% on gross earnings for the period of Riccardo's employment with Khmelevs; and**
- iii) Any public holiday owing (if any).**

**[18] In order to effect compliance with clause 4 of the Record of Settlement, Khmelevs is to pay all PAYE on Ms Babini's earnings to the Inland Revenue no later than 14 days from the date of this determination.**

**[19] In order to effect compliance with clause 2 of the Record of Settlement, I therefore order Khmelevs to pay Mr Bertamini, no later than 14 days from the date of this determination, the outstanding amounts under clause 2, these being:**

- i) Wages in the sum of \$775 (net);**
- ii) Holiday of 8% on gross earnings for the period of Mattia's employment with Khmelevs; and**
- iii) Any public holiday owing (if any).**

**[20] In order to effect compliance with clause 4 of the Record of Settlement, Khmelevs is to pay all PAYE on Mr Bertamini's earnings to the Inland Revenue no later than 14 days from the date of this determination.**

**Filing Fee**

[21] Mr Pasquetti is to be reimbursed the filing fee of \$71.56 by Khmelevs.

**Costs**

[22] While costs are reserved, I note here that, subject to their submissions, the Applicants were not legally represented and, unless they incurred legal costs, it is therefore unlikely they have grounds to claim a contribution to any fair and reasonable costs.

**Eleanor Robinson  
Member of the Employment Relations Authority**