

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 200/10  
5319739

BETWEEN JOHN DESMOND PETERSON  
Applicant

AND BOYD BAKER and BE  
BUILDING CONSTRUCTION  
LIMITED  
Respondents

Member of Authority: P R Stapp  
Representatives: The Applicant in person  
No appearance for the Respondents  
Investigation Meeting: 16 December 2010 at Wellington  
Determination: 16 December 2010

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**RECORD OF ORAL DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Mr Peterson has claimed \$271.12 net of tax that was deducted from his wages (after tax) without notice by the respondent company, B E Building Construction Limited. The deduction was made to cover some accidental damage to a hose, the cost of which Mr Peterson has challenged.

[2] Mr Peterson also claimed unpaid holiday pay at the time he filed his application in the Authority.

[3] The respondents' position was set out in the statement in reply, which essentially tried to justify the deduction, the reasons for the deduction being made and opposed repayment.

[4] On notice I joined B E Building Construction Limited under s 221 of the Employment Relations Act (Notice of investigation meeting dated 18 October 2010).

I considered mediation under s 159 of the Act, but the timing prior to the investigation meeting meant mediation was not possible.

### **Non-appearance of the respondents**

[5] I was satisfied that the respondents have been served with the papers and notice of the investigation meeting. I was supported in reaching this conclusion by the communications received in the Authority's office from the Company and Mr Boyd Baker, the manager. The records are retained on the Authority's file (letter from BE Building Construction Limited dated 13 December 2010).

[6] Pursuant to clause 12 of Schedule 2 of the Employment Relations Act 2000, I proceeded fully in the matter as if the respondents had duly attended or been represented because there was no good cause shown for their non-appearance at the investigation meeting. Prior to the commencement of the investigation meeting, the Support Officer contacted Mr Baker who confirmed that he was not going to attend and left it to the Authority to consider the Statement in Reply (dated 24 September 2010) in regard to the respondents' position on the matter.

### **Determination of the matter**

[7] The deduction from Mr Peterson's wages was \$271.12 net (payslip). He is entitled to be paid this sum because there was no signed written employment agreement stipulating any arrangement for a deduction. Also, the Wages Protection Act requires the payment of wages to be properly made.

[8] Mr Peterson accepted that his employer was B E Building Construction Limited and not Mr Boyd personally. Indeed Mr Peterson confirmed that he did have knowledge of the existence of the Company during his employment and he was paid by the Company (payslip). Since this matter was filed in the Authority, Mr Peterson has been paid his holiday pay. That matter is not being pursued.

[9] B E Building Construction Limited's claim for the cost of the repair of the hose is an entirely separate matter.

[10] I order B E Building Construction Limited to pay John Peterson:

- (a) The sum of \$271.12 net wage arrears;

- (b) The \$70 filing fee for Mr Peterson being put to the cost of these proceedings by the Company.

P R Stapp  
Member of the Employment Relations Authority