

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 294
5341841

BETWEEN SUSAN QUINN, LABOUR
 INSPECTOR
 Applicant

AND BBQ DUCK CAFÉ LIMITED
 Respondent

Member of Authority: Robin Arthur

Representatives: Applicant in person
 No appearance for Respondent

Investigation Meeting: 7 July 2011 by telephone conference

Determination: 7 July 2011

DETERMINATION OF THE AUTHORITY

- A. Under s137 of the Employment Relations Act 2000 BBQ Duck Café Limited is ordered to comply, within 14 days of the date of this determination, with the orders made by determination of the Authority on 18 February 2011 to pay to the Labour Inspector:**
- (i) the specified sums of wages, holiday pay, and interest (for the benefit of its former employee Tian You Li);**
 - and**
 - (ii) \$71.56 in reimbursement of the application fee; and**
 - (iii) \$2000 in penalties for breach of statutory obligations (for transfer to the Crown Account).**
- B. BBQ Duck Café Limited must also pay the Labour Inspector a further \$71.56 in reimbursement of the fee paid to lodge the application for a compliance order.**

[1] By statement of problem lodged on 21 April 2011 Labour Inspector Susan Quinn sought orders requiring BBQ Duck Café Limited (the company) to comply with orders made in an Authority determination issued on 18 February 2011.¹

[2] The company had not attended an Authority investigation meeting held prior to the orders of 18 February being made. It did not lodge a statement in reply to the Inspector's compliance order application. Courier records show the statement of problem was sent to the company's registered office address but returned with a hand written note reading "*Return to sender – company closed*". The Inspector was then asked to arrange personal service on the company at its registered office address. I am satisfied the statement of problem was served at that address by a Labour Inspector on 18 May 2011 and accepted by a man who would only identify himself as "Yang".

[3] In light of the earlier lack of response from the company I made arrangements for the Inspector's compliance order application to be dealt with 'on the papers' but with an opportunity for the parties to be heard by telephone conference. For that purpose a Notice of Investigation Meeting was sent to the parties along with a Minute explaining those arrangements and giving the company the options of providing a telephone number in order to participate in the conference or, if the company objected to that procedure, an opportunity to seek a case management conference. The notice and minute were served at the company's registered office and sent by email to an address for Bing Young who had represented the company in earlier communication with the Authority. A response to that email was received which read: "*re era bbqduck, the company has no money at the moment, can you relay this to the judge for us. Thanks by (sic). B Young*".

[4] As the company had not objected to the proposed procedure for determining the compliance order application and had not taken the opportunity to provide a number at which a representative could be contacted to participate in the investigation meeting by telephone, I proceeded to hear from the Inspector by telephone at the notified time and date and determine the matter as permitted under clause 12 of Schedule 2 of the Employment Relations Act 2000 (the Act).

¹ [2011] NZERA Auckland 66.

[5] I was satisfied from the Inspector's affirmed evidence that the company had not paid the amounts ordered in the Authority's earlier determination and a compliance order should be made. The terms of the order now made are set out at the head of this determination.

[6] Under s138(4A) of the Act the Authority could have ordered the money owed be paid in instalments however there was insufficient evidence to warrant such an order. The email referred to above, apparently from Mr Young, stated the company had no money but this did not confirm that it did not have assets that could be liquidated or other means to raise a loan to meet its obligations to pay the amounts ordered to the Inspector.

[7] Companies Office online records show the Registrar of Companies is satisfied the company has ceased carrying on business but the period for objection to its removal from the register remains open to 14 July 2011. The inspector advised that she had lodged an objection with the Registrar of Companies.

Robin Arthur
Member of the Employment Relations Authority