

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 35/09
5148564

BETWEEN HANS DE REEPER
 Applicant

AND GLENORCHY HOTEL AND
 BACKPACKERS LIMITED
 Respondent

Member of Authority: Helen Doyle

Representatives: Dale Lloyd, Counsel for Applicant
 Tim Brownie, Advocate for Respondent

Determination: 24 March 2009 on the papers

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Hans de Reeper has applied to the Employment Relations Authority for an order that Glenorchy Hotel and Backpackers Limited (Glenorchy Hotel) comply with the terms of settlement entered into under s.149 of the Employment Relations Act 2000 and make a payment to him of the sum of \$3835.72. The settlement agreement was signed by Mr de Reeper and an authorised agent for the Glenorchy Hotel, Tim Brownie. A mediator signed the agreed terms of settlement on 7 November 2008.

[2] Mr de Reeper also seeks an order that Glenorchy Hotel pay interest on the amount of \$3835.72, contribute toward his costs in making the application for a compliance order and reimburse him for his filing fee of \$70.00.

[3] I am satisfied that the statement of problem was duly served at the registered office of the Glenorchy Hotel. There was no statement in reply lodged and served on behalf of the Glenorchy Hotel. Efforts to have a representative of Glenorchy Hotel attend a telephone conference with the Authority were unsuccessful.



[4] The Authority did hold a telephone conference on 9 March 2009 but only Ms Lloyd attended. The Authority then issued a directions notice to both parties which informed Mr Brownie that he had until 4pm on Wednesday 18 March 2009 to provide written reasons why there had not been payment of the amount in the settlement agreement. The notice of direction made it clear that if there was no response by Mr Brownie by that time the Authority would proceed to determine the matter.

[5] Mr Brownie left a voice message with a support officer at the Authority on 17 March 2009 and asked for clarification of the amount that Glenorchy Hotel was to pay to bring an end to the matter. Ms Lloyd then provided a breakdown to the Authority of the amounts she was claiming on behalf of Mr de Reeper which included a claim for costs to date, interest and the filing fee.

[6] The support officer was unable to contact Mr Brownie by telephone and emailed both Mr Brownie and Ms Lloyd to advise that the Authority would proceed to determine the matter so that both parties were have certainty as to what was due and owing and it could be attended to.

The issues

[7] The issues for the Authority to determine are:

- Should there be an order for compliance by the Glenorchy Hotel of the terms of settlement;
- Should there be interest awarded on the outstanding payment for wages as set out in the settlement agreement;
- Is Mr de Reeper entitled to costs, and if so what is a reasonable award.

Should there be an order for compliance by the Glenorchy Hotel of the terms of settlement?

[8] The relevant part of the record of settlement provided:

3. *The Respondent will pay the Applicant by direct credit on this Record of Settlement being signed by a mediator of the Employment Relations Service the sum of \$3,835.72 as reimbursement of all wages owed to the Applicant by the Respondent pursuant to section 123(1)(b) of the Employment Relations Act.*

[9] A mediator signed the record of settlement on 7 November 2008.

[10] I am satisfied that Glenorchy Hotel has failed to comply with clause 3 of the Record of Settlement and that the non-compliance continues in that there is an amount due and owing to Mr de Reeper in the sum of \$3,835.72. It is appropriate that a compliance order be made.

[11] I order Glenorchy Hotel and Backpackers Limited to pay to Hans de Reeper the sum of \$3,835.72 within seven (7) days from the date of this determination.

Should there be interest awarded on the outstanding payment for wages as set out in the settlement agreement?

[12] The Authority has the power to award interest under clause 11 of the Second Schedule of the Employment Relations Act 2000 in the sum for which judgment is given if it thinks fit.

[13] The amount in the settlement agreement which was to be paid by Glenorchy Hotel was expressed to be for unpaid wages. The Authority is of the view that it should make an order for payment by Glenorchy Hotel of interest from the date that the wages under the settlement agreement should have been paid. I do note in passing that the rate Ms Lloyd relied on in assessing interest was the official cash rate at the time the money was due and owing under the settlement agreement in November 2008. The Authority has the power in terms of any order it may make with respect to interest to order it at a rate that does not exceed the 90 day bill rate at the date it makes the order, plus 2%.

[14] I order Glenorchy Hotel and Backpackers Limited to pay interest on the sum of \$3,835.72 from 7 November 2008 until the date of payment at the rate of 5% which rate does not exceed the 90 day bill rate plus 2% as at the date of this order. This is a daily rate of \$0.53.

Costs

[15] I accept that Mr de Reeper has incurred additional legal fees because he was not paid in accordance with the settlement agreement he made with his employer. Ms Lloyd made the Glenorchy Hotel aware that this would be the case in her correspondence. The costs were incurred with respect to corresponding with the

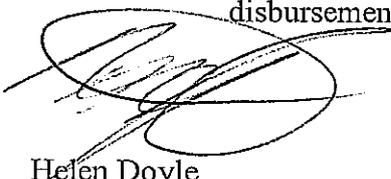
Hotel and its representative to try to secure payment. When there was no payment forthcoming Mr de Reeper was then put to the cost of lodging proceedings in the Employment Relations Authority. Ms Lloyd was required to attend a telephone conference with the Authority and there have been other interactions with the support officer for her to attend to. Ms Lloyd advised the Authority that the legal fees with respect to this matter are approximately \$1,665.00 inclusive of GST.

[16] The Authority needs to ascertain what the reasonable costs are that Glenorchy Hotel should contribute towards. The Authority is of the view that a fair and reasonable contribution would be for the sum of two and a half hours work at the rate of \$250 per hour, which is the sum of \$625.00 together with the reimbursement of the filing fee of \$70.

[17] I order Glenorchy Hotel and Backpackers Limited to pay to Hans de Reeper the sum of \$695.00 being costs and disbursements.

Summary or orders made

- Glenorchy Hotel and Backpackers Limited is ordered to comply with Clause 3 of the Record of Settlement and pay Hans de Reeper the sum of \$3,835.72 within seven (7) days of the date of this determination;
- Glenorchy Hotel and Backpackers Limited is ordered to pay interest on that sum of \$3,835.72 from 7 November 2008 until the date of payment at the rate of 5%; and
- Glenorchy Hotel and Backpackers Limited is ordered to pay costs and disbursements in the sum of \$695.00 to Hans de Reeper.


Helen Doyle
Member of the Employment Relations Authority

