

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Pulvers Roy and Geras Dudik (First Applicants)
AND Lenn Luafutu, Polua Esera and Daniel Alefosio (Second Applicants)
AND Anthony Malcolm Kingi and Tremoyne Victor Andrew Fanning (Third Applicants)

AND APM Buildings Construction Limited (Respondent)

REPRESENTATIVES Pulvers Roy for applicants
No appearance for Respondent

MEMBER OF AUTHORITY Alastair Dumbleton

INVESTIGATION MEETING 29 April 2005

DATE OF DETERMINATION 2 May 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] On 15 April 2005 Mr Pulvers Roy and Mr Gerasi Dudik lodged an application with the Authority in which their employment problem was stated simply to be “unpaid wages and unlawful deduction from wages.” They asked for their application to be treated as urgent.

[2] From information and material supplied by the applicants the Authority was satisfied that the problem required urgent investigation and that mediation was unlikely to help resolve the matter.

[3] Accordingly the Authority gave directions for the Statement of Problem and a Notice of Investigation Meeting to be served together on the respondent APM Buildings Construction Ltd (referred to as “APM”) at the registered office of the company.

[4] A Companies Office search showed that the registered office is at 19 Herd Road, Hillsborough, and that Parvez Zaman is a director of the company. Some of the notices which were served on 18 April 2005 at 19 Herd Road were signed for by “Parvez”.

[5] APM was given until 29 April 2005 to lodge a Statement in Reply and at the same time it was given notice that an Investigation Meeting would be held on that date. The circumstances were such as to make it necessary for the Authority to depart from the normal course taken for resolving an employment relationship problem. Directions necessary to meet the situation presented by this case were given under regulation 4 of the Employment Relations Regulations 2000.

[6] On 21 April 2005 further claims were lodged against APM by Polua Esera, Daniel Alefosio,

Lenn Luafutu, Anthony Kingi and Tremoyne Fanning. They too complained that while employed by APM they had not been paid fully or paid at all in some weeks. These applications were served on the company together with a Notice of Investigation Meeting, also for the date of 29 April 2005.

[7] No Statement in Reply has been received from APM and there was no appearance by or on behalf of the respondent at the investigation meeting.

[8] The Authority proceeded with its investigation in the absence of the respondent, as permitted by clause 12 of Schedule 2 of the Employment Relations Act 2000.

[9] From that investigation I am satisfied that each applicant was employed by APM on various dates from around the beginning of this year. Their employment is evidenced by written employment agreements and related documents under the name of APM. These are signed by "Parvez Zaman". The documents refer to the positions of carpenter/builder and hammer-hand, for which work a wage rate of \$18 per hour with a minimum of 40 hours a week is specified.

[10] I am satisfied that the amounts of wages and holiday pay quantified by each applicant were due to them in respect of several pay periods for work performed for APM under their employment agreements. I am also satisfied from the evidence of each applicant that the amounts have not been paid and remain owing to them.

[11] The reason Mr Zaman has for not paying the amount claimed by each applicant is not one that he has asked the Authority to consider. Urgent action is needed to try and recover the wages and holiday pay while there may still be a chance of doing so. For that reason the Authority of its own motion now orders APM to comply with the employment agreements of the applicants which, I am satisfied, have been seriously breached.

Compliance Order

[12] Under ss.137 and 138 of the Act the employer APM is ordered to comply with the wages provisions of the employment agreement it had with each applicant. APM is to pay the amounts specified in paragraph [13] below to each applicant and is ordered to do so by 5 pm. on 9 May 2005 at the latest. Payment may be made at the office of the Authority in Auckland, if that will assist.

[13] The amounts to be paid by APM to each worker are as follows;

Pulvers Roy	wages	5,760
	holiday pay	<u>561.60</u>
	Total	\$6,321.60
Gerasi Dudik	wages	5,760
	holiday pay	<u>734.47</u>
	Total	\$6,494.40
Polua Esera	wages	3,009
	holiday pay	<u>451.98</u>
	Total	\$3,460.98
Daniel Alefosio	wages	2,727
	holiday pay	<u>374.22</u>
	Total	\$3,101.22

Lenn Luafutu	wages	3,009
	holiday pay	<u>485.46</u>
	Total	\$3,494.46
Anthony Kingi	wages	5,320
	holiday pay	<u>1,440.00</u>
	Total	\$6,760
Tremoyne Fanning	wages	2,600
	holiday pay	<u>811.00</u>
	Total	\$3,411

[14] APM is also ordered to reimburse Mr Roy the lodgement fee of \$70 paid on his application.

[15] Failure by APM to comply with this order of the Authority may be met with an application by any of the above-named employees to the Employment Court under s.138(6) of the Act. The Court may make orders against the person in default if it is satisfied that there has been non-compliance with any compliance order of the Authority. The orders the Court may make can include punishment by fine of up to \$40,000 and by imprisonment for up to three months. The Court may also order that the property of the person in default be sequestered, as a means of enabling creditors to be paid.

[16] During the investigation meeting a mediator attended on Mr Roy and Mr Dudik who, because of their current immigration status, have special circumstances of hardship caused by the default of their employer. Mr Laurenson was able to assist them to complete arrangements that hopefully will see Mr Roy and Mr Dudik recover some money through the help offered by a firm APM had performed work for and is owed money by. The immediate assistance provided by the Mediation Service is acknowledged.

Personal liability of directors

[17] In some circumstances a director of an employer company may become personally liable to pay minimum wages and holiday pay where, as in this case, the company has defaulted on its obligations to pay statutory minimum entitlements. Provision for this remedy is made at s.234 of the Employment Relations Act, which empowers a Labour Inspector to take the action. The applicants should therefore contact an Inspector to discuss their present situation and whether statutory recovery of the wages and holiday due to them may be available.