

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

**[2019] NZERA 543
3073912**

BETWEEN OLIVER SAVAGE
 Applicant

AND WAI SHING LIMITED
 Respondent

Member of Authority: Eleanor Robinson

Representatives: Catherine Stewart and William Fussey, Counsel for Applicant
 Mark Hammond, Counsel for Respondent

Investigation Meeting On the papers

Determination: 20 September 2019

DETERMINATION OF THE AUTHORITY

Application for compliance order

[1] The Applicant, Mr Oliver Savage, has applied to the Authority under s 137 of the Employment Relations Act 2000 (the Act) for an order requiring the Respondent, Wai Shing Limited (WSL), to comply with the determination given by the Authority.

[2] In the determination issued on 29 August 2019 ([2019] NZERA 511), the Authority ordered the interim reinstatement of Mr Savage to his position of Farm Operations Manager with effect from the next working day after the date of the determination i.e. on 30 August 2019.

[3] Mr Savage claims that WSL has not allowed him to resume the full duties of his position as Farm Operations Manager as required by Determination 511.

[4] WSL claims that Mr Savage is working normally and performing work within the scope of the agreed job description.

Note

[5] The parties agreed to the Authority determining this issue based on the Statement of Problem and the Statement in Reply, and on affidavits and submissions from the parties.

Relevant Facts

[6] Mr Oliver had been employed by WSL as Farm Operations Manager on 15 July 2018 until his dismissal on 8 July 2019. His interim reinstatement to the Farm Operations Manager position was ordered by the Authority to take effect on 3 September 2019.

[7] Mr Oliver in accordance with Determination 511 arrived at work on 3 September 2019 and states that he was told by WSL to go on garden leave and stay at home. Mr Savage's legal representative intervened and as a result WSL agreed that Mr Savage could return to work immediately.

[8] Mr Savage attended for work on 4 September 2019 and was sent home on the basis that it was too wet for him to do the duties allocated to him on that day.

[9] Following further intervention by his legal representative Mr Savage returned to work on 5 September 2019 when he was provided with a mobile phone and a vehicle and advised of his tasks for the day.

[10] The tasks were outlined in the document provided to Mr Savage as 'farm maintenance', namely: "cut and clear unwanted plant species i.e. "noxious weeds, plants etc" and: "use knapsack sprayer to spray smaller unwanted plant species i.e. noxious weeds etc". It was indicated to Mr Savage that he should continue in this work until it was finished. Mr Savage is currently still continuing with this work.

[11] Mr Savage states that the work that he is currently directed to carry out comprises only one of the twenty-three responsibilities of the Farm Operations Manager set out in Schedule A of the Employment Agreement with WSL. In addition he claims that he is being deliberately ostracised and allocated dangerous and allocated dangerous and demeaning tasks.

[12] WSL states that it is complying with the order of the Authority and submits that Mr Savage is (i) being paid a salary commensurate with the terms of the Employment Agreement; (ii) has remained, with his wife, in the house provided by WSL; and (iii) no contractual entitlements have been taken away from Mr Savage.

[13] WSL submits that Mr Savage is working normal hours and performing work within the scope of the agreed job description. Affidavit evidence supplied by Mr Frank Wai Shing on behalf of WSL sets out that Mr Savage is undertaking seven of the twenty-three key responsibilities of the Farm Operations Manager role.

[14] Mr Savage disputes that is the case and in his affidavit evidence states that he does not agree that the work he is currently performing amounts to seven of the twenty-three allocated responsibilities.

[15] Even if that were to be the case, which is not accepted, it is submitted for Mr Savage that this does not comply with the order issued by the authority that Mr Savage should be reinstated on an interim basis to the Farm Operations Manager position.

Compliance Order

[16] I am satisfied from the affidavit evidence filed that WSL has not complied with the terms of the Authority's determination of 2 September 2019.

[17] WSL is ordered to comply with the Authority's order by reinstating Mr Savage to his position as Farm Operations Manager with effect from the date of this determination, as ordered by the Authority.

Effect of further non-compliance

[18] WSL is advised that if it does not observe or comply with this Compliance Order then Mr Savage may apply to the Employment Court which may do 1 or more of the following pursuant to s 140 (c) and (d) of the Act:

(c) order that the person in default be sentenced to imprisonment for a term not exceeding 3 months;

(d) order that the person in default be fined a sum not exceeding \$40,000;

(e) order that the property of the person in default be sequestered.

Costs

[19] Costs are reserved pending final determination of this matter.

Next Steps

[20] As previously advised the Authority will shortly convene a case management conference to set timetable directions for the investigation of Mr Savage's substantive claims.

Eleanor Robinson
Member of the Employment Relations Authority