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Sexton v Manuka Hill 2003 Limited (Christchurch) [2018] NZERA 1012; [2018] NZERA Christchurch 12 (31 January 2018)

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Sexton v Manuka Hill 2003 Limited (Christchurch) [2018] NZERA 1012 (31 January 2018); [2018] NZERA Christchurch 12

Last Updated: 13 February 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

[2018] NZERA Christchurch 12
3022783

BETWEEN JAMES MICHAEL SEXTON Applicant

AND MANUKA HILL 2003 LIMITED Respondent

Member of Authority: Helen Doyle

Representatives: Abigail Goodison, Counsel for Applicant

Ian Duncan, Advocate for Respondent

Telephone Conference: 18 January 2018

Memorandum received: 19 January 2018 from Applicant

No response from Respondent

Determination: 31 January 2018

A Within 14 days of the date of this determination Manuka Hill 2003

Limited is ordered to comply with the orders made in paragraphs [31], [67] and [69] of the Authority's substantive determination by paying James Michael Sexton the sum of \$6,794.80.

B. Manuka Hill 2003 Limited is ordered to pay to James Michael Sexton the sum of \$756.19 being costs and disbursements.

Employment relationship problem

[1] James Sexton says that Manuka Hill 2003 Limited (Manuka Hill) has not complied with the substantive determination issued by the Employment Relations Authority on 19 June

2017.1 He seeks a compliance order for the outstanding amounts owed.

[2] Manuka Hill did not lodge a statement in reply to the application. Its representative Mr Duncan did attend a telephone conference on 18 January 2018 with the Authority and Ms Goodison about the application. During the telephone conference there was discussion about the orders made by the Authority in its substantive determination which included reimbursement of four days found to be incorrectly deducted from Mr Sexton's annual leave entitlement.

[3] Ms Goodison agreed during the telephone conference to provide a memorandum quantifying four days' pay in accordance with Mr Sexton's work day cycles and to set out details of the applicant's legal costs and disbursements in making the application for compliance by 19 January 2018.

[4] Mr Duncan agreed to lodge with the Authority and serve on Ms Goodison any response to both the application for compliance and to Ms Goodison's memorandum, and provide any additional information by 4pm Thursday, 25 January 2018.

[5] The only explanation as to why there had been no compliance with the orders was that Mr Duncan said that he understood the respondent was intending to challenge the determination. It was discussed that the Authority may, after receiving the information, proceed to determine the application for compliance.

[6] On 26 January 2018 Mr Duncan sent an email to the Authority and to Ms Goodison advising that there seemed some inconsistency with Ms Goodison's calculation with respect to the four days' pay. Mr Duncan proposed to provide a full response in writing on Monday,

29 January 2018, by close of business based on any additional documents he may access.

There was no response received from Mr Duncan by that date.

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[7] The Authority had advised Mr Duncan that if there was no response received by the extended date it would that would determine the application for compliance and place reliance on Ms Goodison's calculations with respect to four days annual leave.

[8] I intend to now proceed to determine the application for compliance.

Quantification of four days annual leave

[9] In her memorandum Ms Goodison set out that the relevant days ordered to be reimbursed in the substantive determination were 27 February 2014, 30 May 2014, 16

September 2014 and 3 October 2014. Mr Sexton's annual salary was \$55,000 and he worked in 21 day cycles, working eight days on and two days off, then eight days on and three days off. Ms Goodison calculated that there were 17.3 work periods in a year on the basis of 365 days divided by 21 cycles. Further, that for each work period Mr Sexton was paid \$3,179 which is \$55,000 divided by 17.3. She has then assessed the daily rate at \$198.70 on the basis of \$3,179.19 divided by 16 working days in a 21 day working period. On that basis she has assessed the total reimbursement for four days is \$794.80 being \$198.70 multiplied by four. I accept the basis for calculation of the amount owing for four days is both appropriate and accurate.

Summary of amounts owing under the Authority's determination

[10] Paragraph [31] of the substantive determination provides for reimbursement for four of the days incorrectly deducted from Mr Sexton's annual leave entitlement. I accept that the amount owing based on the calculation set out in paragraph [9] above is the sum of \$794.80.

[11] Paragraph [67] of the substantive determination contains an order that Manuka Hill pay Mr Sexton the sum of \$5,000 under s 123(1)(c)(i) of the Act.

[12] Paragraph [69] of the substantive determination contains an order that Manuka Hill pay Mr Sexton the sum of \$1,000 being reimbursement of a sum for moving costs.

[13] The total amount that Manuka Hill is liable to pay as set out above is \$6,794.80. For completeness there has been a separate determination for costs but I understand as Mr Sexton is legally aided that is a matter with the legal aid provider.

[14] Mr Duncan did not suggest during the telephone conference that there has been any payment made to Mr Sexton. I accept there has not.

Should a compliance order be made?

[15] There was no assurance given that Manuka Hill would meet its obligations to Mr Sexton in the absence of a compliance order from the Authority. I therefore consider it appropriate to exercise the Authority's discretion and issue a compliance order under s 137 of the Act.

[16] The Authority has the power to order compliance under s 137 (1) (b) of the Act: *any order, determination, direction or requirement made or given under this Act by the Authority or a member or officer of the Authority.*

[17] Within 14 days of the date of this determination Manuka Hill is ordered to comply with the orders made in paragraphs [31], [67] and [69] of the Authority's substantive determination by paying Mr Sexton the sum of \$6,794.80.

Costs

[18] Mr Sexton was legally aided for the purposes of making the application for compliance and Ms Goodison has attached sums already invoiced to the Legal Aid Service in respect of this matter of \$314.73, which includes the filing fee of \$71.56 but does not include the \$50 legal aid user charge. That initial invoice was for preparation of the application and advice that it was being served. The invoice for the user charge of \$50 has been attached and as that is an amount Mr Sexton had to pay there is no reason that should not be included in an assessment of costs and be added to the \$314.73.

[19] Ms Goodison set out that she anticipated a further \$391.46 (including GST) of costs on the basis of 2.2 hours of unbilled time and an anticipated 1.5 hours work if the matter concludes after the earlier telephone conference. I accept this estimate is reasonable, assessed for the additional costs after the lodging of the application, time for communication with the Authority, attending a telephone conference with the Authority, preparing the memorandum and elements of reporting back and finalisation.

[20] Mr Sexton has been put to the expense of making an application to comply with the Authority's substantive determination and I find he is entitled to be reimbursed for the costs incurred to date and the reasonable amount sought for anticipated costs. I find there should be an award for costs and disbursements in the sum of \$756.19 which includes reimbursement of the filing fee of \$71.56.

[21] I order Manuka Hill 2003 Limited to pay to James Michael Sexton the sum of \$756.19 being costs and disbursements.

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Helen Doyle

Member of the Employment Relations Authority

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