

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 361/09
5157418

BETWEEN

KARL JASON SMITH
Applicant

AND

PENROSE PANEL AND
PAINT 2007 LIMITED
Respondent

Member of Authority: R A Monaghan

Representatives: Karl Smith, in person
No appearance for respondent

Investigation Meeting: 12 October 2009

Determination: 12 October 2009

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Karl Smith seeks payments of outstanding wages and holiday pay from his former employer, Penrose Panel and Paint 2007 Limited ("PPPL 2007").

Preliminary matter

[2] PPPL 2007 did not attend and was not represented at the investigation meeting. Its sole director and shareholder, Murali Seetharaman advised the Authority in a letter dated 29 September 2009 that he would not be attending the meeting for personal and domestic reasons not specified.

[3] PPPL 2007 has received the statement of problem and the notice of meeting. It has not provided good cause for its failure to attend or be represented at the meeting. Accordingly I proceeded under clause 12 Schedule 2 of the Employment

Relations Act 2000 to act as fully in the matter as if the company had attended or been represented.

Determination

[4] Mr Smith and PPPL 2007 began their employment relationship in April 2007. At the time Paul Hale was registered as a co-director and a shareholder of the company, but in April 2008 Murali Seetharaman became the sole director and shareholder. The parties also signed a written employment agreement in April 2008. None of these events affected the status of PPPL 2007 as the employer party to the relationship up to and including that date.

[5] In or about March 2009 Mr Seetharaman appears to have abandoned the business, owing a number of debts. According to Mr Seetharaman's 29 September letter to the Authority, he had defaulted in payments he owed Mr Hale pursuant to the agreement to purchase Mr Hale's shares in the company. Mr Seetharaman also acknowledged in the letter that he owed Mr Smith 'a few days of holiday pay'.

[6] Mr Smith says for day to day purposes his employment continued, as Mr Hale returned and operated the business. However Mr Hale is the director and a shareholder of Penrose Panelbeaters 2009 Limited ("PPL 2009"), which was registered in March 2009. As a matter of law Mr Smith's employment relationship with PPPL 2007 ended when Mr Seetharaman abandoned the business. It appears that, subject to anything Mr Hale might say about the matter, by continuing to report to work for a period Mr Smith entered into a new employment relationship with PPL 2009.

[7] None of this absolves PPPL 2007 from liability in respect of any monies owed to Mr Smith as at March 2009. In that respect I find PPPL 2007 owes Mr Smith:

- (a) \$2,160 (gross) in respect of 9 days' unpaid holiday pay; and
- (b) \$240 (gross) in respect of one day's work not paid for.

[8] Payment is ordered accordingly.

[9] PPPL 2007 is further ordered to pay interest on the above amounts calculated at 4.8% from 1 April 2009 to the date of payment.

Costs

[10] PPPL 2007 is further ordered to reimburse Mr Smith for the Authority's filing fee of \$70.

Addendum

[11] A check of the companies office website conducted after the conclusion of the investigation meeting revealed that PPPL 2007 was placed in liquidation on 9 October 2009.

[12] For Mr Smith's information, he will need to approach the liquidators on any matter arising out of this order. The liquidators are at Deloitte's.

R A Monaghan

Member of the Employment Relations Authority