

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 132/10
5301297

BETWEEN DAVID NEVILLE STEANS
 Applicant

A N D CANTERBURY CONCRETE
 CUTTING (NZ) LIMITED
 Respondent

Member of Authority: James Crichton

Representatives: Applicant in person
 Murray Chesterman for Respondent

Investigation Meeting: By telephone on 17 June 2010

Determination: 24 June 2010

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Mr Steans) was employed by the respondent (Concut) until his redundancy, with effect from receipt of a letter dated 24 August 2009. The redundancy, a consequence of the economic downturn, was effected on an urgent basis and involved 15 staff of Concut.

[2] There is no contest by Mr Steans about the genuineness of the redundancy; he simply seeks his redundancy compensation which as yet has not been paid in full.

[3] It is common ground that Mr Steans is entitled to a total of four weeks' redundancy compensation. The letter dismissing Mr Steans for redundancy sets out that entitlement but then goes on to state that Concut is not in a position to meet that obligation in full at the time the redundancy was effected.

[4] The letter includes a promise from Concut that every effort will be made to meet the redundancy obligations and to date, Concut has not been able to honour that undertaking.

[5] During the telephone conference I convened between the parties, it became clear that Concut had paid one week's redundancy pay to Mr Steans and, on a separate occasion, had also paid his annual holiday pay. Mr Steans accepted that those payments had been made and that in consequence all that he was now entitled to was three weeks' pay which amounts to a total of \$3,201.93 gross.

[6] Mr Chesterman for Concut, acknowledged during the telephone conference that the pledge contained in the redundancy letter of 24 August 2009 had not yet been met, but he indicated to Mr Steans and to the Authority that he expected to shortly be in a position to propose a repayment amount on the basis that a regular amount would be deducted from the weekly revenue of Concut and that amount would be evenly divided between the affected former staff members. For Mr Steans, the consequence was that he could look forward to receiving a sum of \$30.77 weekly as a progress payment in respect of the outstanding debt. Mr Chesterman calculated that a repayment amount of that magnitude would take 104 weeks to clear the debt in its entirety in Mr Steans' case, but he noted that if the company's fortunes improved, then lump sum reductions of the debt could be made as well.

Determination

[7] I am satisfied that Mr Steans has proved his claim that he is owed three weeks' wages by his former employer, Concut, by way of unpaid redundancy compensation and the evidence before the Authority confirms that Concut agrees that money is owed.

[8] Concut continues to have significant cashflow issues as a consequence of a fall off in demand for its services and it says it is not able to make payments on anything other than the very modest basis described above. While accepting that evidence from Concut at face value, I leave it to the parties for direct negotiation between them as to how the amount of money owed is to be repaid. In that regard, Mr Steans has accepted my suggestion that he will talk directly to Mr Chesterman about the debt.

[9] The proper course for the Authority at this juncture is to simply order that Concut is to pay to Mr Steans the wages due to him by way of redundancy

compensation in the sum of \$3,291.93 gross, that payment to be made on such basis as the parties may between them agree.

[10] To assist Mr Steans a certificate of determination is to be provided by the Authority.

Costs

[11] Mr Steans is also entitled to be paid the filing fee in the Authority of \$70 and I direct that that amount is to be paid forthwith by Concut to Mr Steans. Any other costs incurred by the parties in the instant matter are to lie where they fall.

James Crichton
Member of the Employment Relations Authority