

[5] Mr Taljaard has been unable to recover the above amounts ordered to be paid.

[6] The respondent has failed to lodge a statement in reply as required and it has not subsequently obtained, or even sought, leave to reply or respond to this application for compliance, also as required.

[7] The investigation meeting in relation to the Inspector's latest application proceeded in the absence of any representative of Discount Crane Hire Limited. The first and only contact with the Authority by a representative was on the day notified for the meeting, in the hour before it was due to start. He indicated he would attend but was likely to be late. When he was not present at 10am the meeting was adjourned until 10.30am and the representative was contacted and advised he would be indulged to that degree.

[8] I am satisfied that the company, as it has acknowledged, was served properly with notice of the meeting and was thereby given a reasonable opportunity to seek to take part, even at a late stage if it wished.

[9] I find that the arrears of holiday pay, the interest and penalties and filing fee have not been paid by Discount Crane Hire Limited, as required by the Authority's determination. I am satisfied that Mr Taljaard has made all reasonable efforts to get the company to make the payments ordered but has not been successful.

[10] The remedy of compliance under s 137 is discretionary. A matter going to the exercise of that discretion in this case is the existence of a challenge to the Employment Court by Discount Crane Hire Limited against the Authority's determination given in August 2009. The company was recommended by the Court in a Minute to the parties to seek legal advice about that challenge.

[11] At 9.23am on 5 November (37 minutes before the notified time for commencement of the investigation meeting) a fax was received by the Authority from Ward H Pearce who is a director of the respondent. He applied for a stay of proceedings on the grounds simply that a challenge had been made against the Authority's determination.

[12] A challenge to the Court is expressed by s 180 of the Act not to operate as a stay of proceedings on the determination of the Authority unless the Court, or the

Authority, makes an order to that effect. No order has been made by the Authority, or the Court to my knowledge.

[13] In a report prepared by the Authority at the request of the Court under s 181 of the Act for the purposes of the challenge, the Authority expressed its view that Discount Crane Hire Limited had intended to obstruct, evade or delay the resolution of the employees' claims as were originally brought by Mr Taljaard. The Authority's report concluded that the company had not acted in good faith and had obstructed the original investigation.

[14] Discount Crane Hire Limited did not respond to that report, a copy of which was sent to it for any reply it wanted to give. It has not sought to contradict the Authority's conclusions against it, despite being given an opportunity to do so as part of the good faith report process, and when it might also be expected to have done that if it had disagreed with the Authority's strongly adverse conclusions as expressed in the report.

[15] Although the final good faith report was sent in September to the Court it has to date not issued any further minute or directions in relation to the challenge.

[16] In the circumstances no account is taken of the challenge in deciding whether to order compliance. The respondent did not seek and has not been granted leave to respond to the compliance application, and I am not satisfied that the purported response by way of an application for a stay has been made in good faith.

[17] The discretion under s 137 is exercised in favour of the Labour Inspector.

Compliance Order

[18] The following orders are therefore made. Discount Crane Hire Limited is to comply with the Authority's determination dated 10 August 2009 (under AA 268/09) by 5pm, Friday 20 November 2009, at the latest.

[19] Discount Crane Hire Limited is to pay to Mr Taljaard on or before that date holiday pay of \$3,371.44 for the use of Mr Jason Guptill, and \$8,659.56 for the use of Mr Erran Doherty.

[20] The company is also to pay interest at the rate of 4.5% on those sums from 18 January 2009. As at the date of this determination the amounts of interest are

\$120.94 for Mr Guptill and \$310.67 for Mr Doherty. After 5 November 2009 interest will continue accruing at a daily rate of \$0.4156 for the former and \$1.0676 for the latter in the period, until the principal sums are paid to each employee.

[21] The company is also to pay the Labour Inspector the sum of \$5,000 as a penalty, which is to go into the Crown account.

[22] Also to be paid to the Labour Inspector is the \$70 filing fee on the original application.

[23] As the Labour Inspector is aware, if necessary an application may be made by him to the Employment Court under s 139 of the Act to enforce this order of compliance.

[24] I order Discount Crane Hire Limited to pay \$70 to reimburse the filing fee on this latest application. This is in addition to the \$70 to be paid on the first application.