

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 64/09
5158208 and 5116338

BETWEEN TOP CLASS
CONSTRUCTION LIMITED
Applicant 5116338/
Respondent 5158208

AND NICOLA MEDWAY
(LABOUR INSPECTOR)
Respondent 5116338/
Applicant 5158208

Member of Authority: G J Wood

Representatives: No attendance for applicant/respondent
Nicola Medway on her own behalf

Investigation Meeting: 21 May 2009 at Wellington

Determination: 21 May 2009

ORAL DETERMINATION OF THE AUTHORITY

[1] Top Class Construction Limited (Top Class) employed Mr Stephen Veale between July and December 2007. When his employment ended he was not paid his final week's pay, or any holiday pay. He complained to the Labour Inspector.

[2] Following a laborious and lengthy process, characterised by non co-operation by Top Class Construction Limited and its Directors, Mr Des Dasey and Ms Kim Jamieson, Ms Medway decided to issue a demand notice for the failure to pay certain sums to Mr Veale. In doing so Ms Medway went through the proper process of consultation and service. The sum she claimed on Mr Veale's behalf was \$1,381.60 gross, which consisted of payment at the minimum wage rate for Mr Veale's last week of work, plus 8% holiday pay on his total earnings. I accept Ms Medway's calculations as being sums that Mr Veale was entitled to recover through a Labour Inspector.

[3] Top Class had a statutory right to object to the demand notice under s.225, which it did. In his application on behalf of Top Class Mr Dasey did not deny that monies were owing to Mr Veale, but wanted taken into account his view that Mr Veale had caused Top Class to lose important contracts and had threatened him and his family. He also noted that Top Class was no longer trading and had no money.

[4] Not only are none of these matters legal grounds for an objection to Top Class having to pay the sums in issue, but Top Class was not represented at the investigation meeting so its objections could be considered. Therefore there was no evidence to support those claims, including that Top Class is unable to pay the sums owing. This is relevant for the later claim by Ms Medway for a compliance order under s.137(1)(a)(iv), to order Top Class to pay the monies owing to her.

[5] At the commencement of the investigation meeting I requested a support officer to contact Mr Dasey about the failure of Top Class to be represented, but he was unable to be contacted on the phone numbers he had provided. This was consistent with his failure to attend on a conference call previously, together with Top Class's failure to provide a statement in reply to the compliance order application. I was satisfied that Top Class had been served with the notice of investigation meeting as it was sent to its registered office and address for service and signed for by "Judy". I therefore determined, pursuant to clause 12 of Schedule 2 of the Act, to act as fully in the matter as if it had been represented, as no good cause had been shown for its failure to be represented.

[6] In the absence of any evidence the objection must fail and a compliance order must also be granted, as there is no reason to conclude that Top Class could not pay the sums owing to Mr Veale, particularly over time.

[7] In bringing this application for a compliance order and defending the objections of the demand notice, Ms Medway claims \$ 70 in expenses. I accept that the filing fee is recoverable in these circumstances.

[8] I therefore order the respondent in 5158208, Top Class Construction Limited, to pay to the applicant in 5158208, Ms Nicola Medway (for the use of Mr Stephen Veale), the sum of \$1,381.60 gross, together with expenses to her of \$70, within 28 days of the date of this determination.

[9] The applicant/respondent is also formally referred to the provisions of s.140(6) of the Act, which provide for potential sanctions for non-compliance to be applied by the Employment Court, including fines and the sequestration of company property.

G J Wood
Member of the Employment Relations Authority