

Application to vary orders

[4] The applicant has applied for a variation to the Labour Order given his residence condition has changed, so that he no longer resides with Ms Falani-Togiakona.

[5] The applicant seeks to vary the residence condition to live at the home of Niupoe and Lalomangi Togiakona at Vaipapahi, Hikutavaki.

[6] The applicant notes that he has complied with all other conditions of the order and seeks that all other conditions of the order remain the same.

Police response to the application

[7] The Niue Police do not object to the change of residency so the applicant will reside with Niupoe and Lalomangi Togiakona.

[8] Police consent to the change in residency appears to be due to the Police recognition that the applicant needs good supervision and by implication it seems that Niupoe and Lalomangi Togiakona will provide that supervision.

[9] The Police however do ask for the inclusion of an additional condition that Mr Tahega is not to purchase or consume alcohol.

[10] The reasoning for this condition is outlined in the Police response where they note that Mr Tahega was involved in an incident where he became intoxicated and behaved in a manner which was unacceptable to others forcing Ms Pamela Falani-Togiakona to call Police for assistance.

Applicant's response

[11] The applicant's response of 13 November 2013 does confirm that an incident referred to by the Police did occur however there are some inaccuracies with the Police record of the event. Notwithstanding that, it is accepted by the applicant that the incident would not have occurred but for the consumption of alcohol resulting in intoxication on the night.



[12] The applicant instructed his counsel that he would comply with the additional condition, proposed by the police, if it were to be imposed.

[13] Counsel does query whether, given the impending Christmas and New Year season, such a condition would be unduly harsh and restrictive and may possibly set the applicant up for failure. Counsel suggests that a less restrictive condition such as not to be found intoxicated would meet the concerns that have arisen as a result of the previous incidents.

Decision

[14] I intend to vary the labour order in terms of the residency condition given the Police do not object to this variation.

[15] Pursuant to s 28(1) of the Niue Act 1966 condition (ii) of the Labour Order varied on 30 August 2013 is now varied to provide that the defendant is to live with Niuepoe and Lalomangi Togiakona at Vaipapahi, Hikutavake.

[16] I also impose a further condition that the applicant, Lionel Tahega, is not to purchase or consume alcohol for the duration of the Labour Order.

[17] I accept counsel's query that with the impending Christmas and New Year season, this condition is restrictive.

[18] However, the applicant has indicated that he will comply with such a condition and given the recent incident as noted by the Police and accepted by the applicant, refraining from alcohol will assist the applicant in avoiding a repeat of such an incident.

[19] Pursuant to s 28(1) of the Niue Act 1966 a new condition of the Labour Order is added that the defendant is not to purchase or consume alcohol from the date of this order until the order concludes on 5 April 2014.

Conclusion

[20] So everyone is clear the conditions of the Labour Order are therefore:


- (i) That in terms of s 28(2) the defendant is to perform labour on public works in Niue for 3 days per week under the control and subject to the direction of an



officer nominated for that purpose by the Chief of Police to commence on Monday 18 November 2013 and to conclude on 5 April 2014.

- (ii) During the whole of that period as set out above the defendant is to live with Niuepoe and Lalomangi Togiakona at Vaipapahi, Hikutavake.
- (iii) The passport of the defendant is to be held by the Niue Police until 5 April 2014.
- (iv) The defendant is not to purchase or consume alcohol from the date of this order until the order concludes on 5 April 2014.

Dated at Rotorua, New Zealand this 20th day of November 2013



C T Coxhead J