

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2025] NZEmpC 151
EMPC 18/2025**

IN THE MATTER OF	an application under s 138(6) of the Employment Relations Act 2000 for sanctions under s 140(6)
BETWEEN	SUHEE LEE Plaintiff
AND	YAMAYA NZ LIMITED First Defendant
AND	JUNG IM KANG Second Defendant
AND	KYUNG KIM Third Defendant

Hearing: 10 June 2025
(Heard at Tauranga)

Appearances: S Kang, counsel for plaintiff
K Kim, third defendant in person and agent for first and second
defendants

Judgment: 22 July 2025

JUDGMENT OF JUDGE J C HOLDEN

[1] Suhee Lee is seeking orders under s 140(6) of the Employment Relations Act 2000 against her former employer, Yamaya NZ Ltd and its directors Jung Im Kang and Kyung Kim. She also seeks costs.

[2] Those orders are being sought because the defendants did not satisfy orders made by the Employment Relations Authority in a determination issued on 13 December 2024.¹

[3] In that determination the Authority ordered Yamaya NZ to pay the following amounts:

- (a) \$18,000 compensation and \$5,520 gross lost wages for unjustifiable dismissal;
- (b) \$1,380 gross and \$368 net arrears of wages and holiday pay, respectfully;
- (c) Interest;
- (d) \$6,000 penalty (half to be paid to the Crown); and
- (e) \$15,250 costs and \$871.56 disbursements.

[4] Mrs Kang and Mr Kim were ordered to take the steps necessary to ensure Yamaya NZ met its obligations to make payment in full to Ms Lee.

[5] The defendants also were ordered to pay Ms Lee \$1,000 costs and \$71.55 for a filing fee.

[6] The money Yamaya NZ was ordered to pay has not been paid.

[7] Hence Ms Lee's application for orders under s 140(6) of the Act.

¹ *Lee v Yamaya NZ Ltd* [2024] NZERA 741.

[8] Where compliance orders made by the Authority under ss 137(1) or 137(2) of the Act have not been complied with, the adversely affected party may apply to the Court for orders under s 140(6).² The section reads:

- (6) Where any person fails to comply with a compliance order made under section 139, or where the court, on an application under section 138(6), is satisfied that any person has failed to comply with a compliance order made under section 137, the court may do 1 or more of the following things:
- (a) if the person in default is a plaintiff, order that the proceedings be stayed or dismissed as to the whole or any part of the relief claimed by the plaintiff in the proceedings:
 - (b) if the person in default is a defendant, order that the defendant's defence be struck out and that judgment be sealed accordingly:
 - (c) order that the person in default be sentenced to imprisonment for a term not exceeding 3 months:
 - (d) order that the person in default be fined a sum not exceeding \$40,000:
 - (e) order that the property of the person in default be sequestered.

[9] In *Peter Reynolds Mechanical Ltd t/a The Italian Job Service Centre v Denyer (Labour Inspector)*, the Court of Appeal referred to a range of factors to consider in assessing sanctions under s 140(6).³

[10] The factors referred to by the Court of Appeal are not exhaustive but include the nature of the default (that is whether it is deliberate or wilful), whether it is repeated, without excuse or explanation and if it is ongoing. The Court also will take into account any remedial steps taken, the defendant's track record, the respective circumstances of the employer and employee, the appropriateness of a deterrent, and proportionality.

Ms Lee seeks a fine

[11] Mr Kang, counsel for Ms Lee, submits that a fine would be the most appropriate sanction in this instance. He says that a fine of \$20,000 would be

² The application is made under the Employment Relations Act 2000, s 138(6).

³ *Peter Reynolds Mechanical Ltd t/a The Italian Job Service Centre v Denyer (Labour Inspector)* [2016] NZCA 464, [2016] ERNZ 828 at [76]–[77]. See too [56]–[75].

appropriate for Yamaya NZ and that a fine of \$10,000 each would be appropriate for the two directors. He asked for an order that the full amount of the fines be made payable to Ms Lee as she is the one who directly suffered from the defendants' breaches and has struggled financially and been emotionally distressed because of the defendants' ongoing default.

[12] Turning to the factors referred to in *Peter Reynolds*, Mr Kang's submissions can be summarised in the following way:

- (a) The defendants' default has been prolonged, ongoing and deliberate;
- (b) They have failed to provide any excuse or explanation;
- (c) The impact on Ms Lee has been significant;
- (d) The fine sought of \$40,000 is at a similar level to the substantive remedies and costs owed of \$41,389.56 (excluding penalties).

[13] Ms Lee also applied for costs on a client-lawyer basis totalling \$6,898.85 and disbursements of \$1,878.31, which included the court filing fee, the costs of a process server and counsel's travel and accommodation costs for travel between Napier and Tauranga.

Defendants' submissions

[14] Mrs Kang and Mr Kim did not file a statement of defence or otherwise engage with the Court prior to the formal proof hearing. They were, however, summonsed to appear at the hearing at the request of Ms Lee, and attended Court. It transpired that Mrs Kang did not speak English and so was unable to give evidence.⁴ Mr Kim (who is Mrs Kang's husband) spoke for all three defendants, and provided various documents that he said showed the difficult financial position of the defendants. In the event, the hearing was adjourned, and directions made for submissions to be provided in writing.

⁴ The Court had no prior advice that she would require an interpreter.

[15] Mr Kim's written submissions to the Court traverses the substantive claim, which was resolved by the Authority's determination of 13 December 2024, and then makes submissions as to the financial position of the defendants.

[16] Although Ms Lee disputes Mr Kim's depiction of the defendants' financial position, I accept that Yamaya NZ is a small family business from which Mrs Kang and Mr Kim earn a relatively modest income.

Sanctions are appropriate

[17] The first issue to address is whether it is appropriate to impose any of the sanctions sought under s 140(6).

[18] The Authority's orders were breached, and the defendants have made little attempt to pay Ms Lee what she is due.⁵

[19] *Peter Reynolds* confirmed that the primary purpose of a compliance order is to compel the defaulting party's compliance, but that there is a further purpose; to impose a sanction for non-compliance.

[20] Breaching a compliance order is a serious matter and warrants a serious response. The Authority, the Court and the parties are entitled to expect orders to be obeyed and it is likely to be in only reasonably rare cases that non-compliance would be excused. A sanction is called for.

[21] In setting the amount of the fine, I take into account that the default in payment has been ongoing for some time, even though Yamaya NZ is still in business, and that there has been only limited engagement with Ms Lee or her representative. It is a serious matter that has considerably impacted Ms Lee; the amount due to her is significant. While I take that into account, I do not, however, consider that the level of the fine should correspond to the debt due.

⁵ The defendants' former solicitors are apparently holding \$2,300 in trust, but it is unclear on what basis.

[22] I also take into account that this is the first time any of the defendants have been before the Court for such a default, and that Yamaya NZ is a small family business.

[23] Further, I consider the close association between the defendants makes it appropriate to consider the total fines globally.⁶

[24] In the circumstances of this case, I consider that the total fines should be \$8,000, being a fine of \$4,000 for Yamaya NZ and a fine of \$2,000 for each of the two directors.

A proportion of the fines is to be paid to Ms Lee

[25] Under s 140(7) of the Act, the Court may order some or all of the fine to be paid to the employee who brought the proceeding. That is appropriate here to recognise the time and effort, that has been required by Ms Lee to bring this matter to the Court. I order that seventy-five percent of each fine be paid to her and the remainder to the Crown.

Costs awarded

[26] It is appropriate for costs to be awarded against the defendants jointly and severally. The amount sought is less than scale costs, calculated on a 1A basis.⁷ They are awarded in full. Disbursements of \$958 are also awarded, covering the court filing fee and the costs of the process server. Counsel's travel and accommodation costs are not allowed as there would have been Tauranga counsel able to undertake the legal work.

⁶ *Shah Enterprise NZ Ltd v Labour Inspector of Ministry of Business, Innovation and Employment* [2022] NZEmpC 177, [2022] ERNZ 873 at [61].

⁷ "Employment Court of New Zealand Practice Directions" (1 September 2024) <www.employmentcourt.govt.nz> at No 18.

Outcome

[27] I order:

- (a) Pursuant to s 140(6) of the Act, Yamaya NZ Ltd is ordered to pay a fine of \$4,000. Of that sum, \$3,000 is to be paid to Ms Lee and the remainder to the Crown.
- (b) Jung Im Kang and Kyung Kim are each ordered to pay a fine of \$2,000. Of that sum, \$1,500 is to be paid to Ms Lee and the remainder to the Crown.
- (c) Costs totalling \$6,898.85 plus disbursements of \$958 are to be paid by the defendants jointly and severally to Ms Lee.
- (d) All these sums are to be paid no later than **21 days after the date of this judgment.**

[28] I note that Ms Lee remains able to pursue the amounts due to her as a result of the Authority's determination of 13 December 2024 through the usual recovery procedures in the District and High Courts.

J C Holden
Judge

Judgment signed at 10 am on 22 July 2025