

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

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

**[2025] NZEmpC 163
EMPC 136/2025**

IN THE MATTER OF an application under ss 138(6) and 140(6) of
the Employment Relations Act 2000

BETWEEN YADWINDER SINGH
Plaintiff

AND BIMLESH CHAND
Defendant

Hearing: 14 July 2025
(Heard at Christchurch via Audio Visual Link)

Appearances: J Plunket, counsel for plaintiff
No appearance for the defendant

Judgment: 6 August 2025

JUDGMENT OF JUDGE HELEN DOYLE

[1] Yadwinder Singh is seeking orders under ss 138(6) and 140(6) of the Employment Relations Act 2000 (the Act) to impose a sanction on Bimlesh Chand because he has not complied with compliance orders made by the Employment Relations Authority (the Authority).¹

[2] Section 140(6) empowers the Court to make certain orders on an application under s 138(6) of the Act. The Court must be satisfied that any person has failed to comply with a compliance order made by the Authority. The orders that the Court may make include that the person in default be fined a sum not exceeding \$40,000, be

¹ *Singh v Chand* [2024] NZERA 398 (First Determination); *Singh v Chand* [2025] NZERA 26 (Second Determination).

sentenced to imprisonment for a term not exceeding three months or that the property of the person in default be sequestered.

[3] Mr Singh seeks the imposition of a fine and an order that the whole or part of the fine imposed be paid to him pursuant to s 140(7) of the Act. He also seeks leave if the compliance orders remain outstanding after a date to be specified by the Court, to apply for orders that the property of Mr Chand be sequestered, and that Mr Chand be sentenced to imprisonment for a term not exceeding three months. An order is sought that interest is payable on the amounts owing under the settlement agreement together with costs and disbursements.

Issues

[4] The Court needs to decide the following issues:

- (a) Has Mr Chand failed to comply with a compliance order made by the Authority under s 137 of the Act?
- (b) Should the Court impose a fine and, if so, what should the amount of the fine be?
- (c) If a fine is imposed should the Court direct that the whole or any part of the fine be paid to Mr Singh?
- (d) Is the Court able to order interest payable on the amounts outstanding?
- (e) Should there be leave to apply for further orders under s 140(6) if there is continued non-compliance with the Authority's compliance orders?
- (f) What would an appropriate order for costs and disbursements be?

Has Mr Chand failed to comply with a compliance order made by the Authority under s 137 of the Act?

[5] Mr Singh entered into a settlement agreement with NKA Services Ltd (in liquidation), hereafter referred to as the employer company and Mr Chand. The

settlement agreement was signed by the parties and certified by a mediator pursuant to s 149 of the Act on 13 November 2023. It provided for payment of outstanding salary and accrued holiday pay of \$13,000 to Mr Singh by direct credit less tax. The salary and accrued holiday pay were to be paid by 13 instalments of \$1,000 due on the last day of each month. The first payment was to be made on or before 31 December 2023 and the final payment on or before 31 December 2024.

[6] The employer company was placed into liquidation on 7 March 2024 on the application of the Commissioner of Inland Revenue. The settlement agreement provided that the employer company and Mr Chand acknowledge joint and several liability for all sums payable under the agreement.² Mr Chand continues to be liable for payments of the amounts owed to Mr Singh under the settlement agreement.

[7] Mr Singh made application to the Authority on two separate occasions for compliance with the payments under the settlement agreement and penalties for the breaches of the settlement agreement.

First determination

[8] The Authority recorded in a determination dated 3 July 2024 that there had been payment of some, but not all, of the amounts due on 31 December 2023 and January 2024 to Mr Singh.³ Instalments due on 29 February, 31 March, 30 April, 31 May and 30 June 2024 had not been paid.⁴ A compliance order requiring payment of the sum of \$5,692 within 14 days of 3 July 2024 was made. It was noted in the determination that Mr Chand remained liable for instalments due at the end of the months from July to December 2024.

[9] A contribution of \$500 towards the costs incurred by Mr Singh was ordered, together with reimbursement of the filing fee of \$71.55. The sum of \$571.55 was ordered payable by no later than 31 July 2024.

² Clause 2 of the settlement agreement.

³ First Determination, above n 1, at [7].

⁴ At [9].

[10] A penalty of \$500 was awarded payable to the Crown by no later than 31 August 2024. It is not a matter for consideration by the Court, as it is not the subject of a compliance order.

[11] This determination was not challenged by Mr Chand.

Second determination

[12] In a further determination dated 20 January 2025, the Authority recorded that Mr Chand had not paid to Mr Singh the amounts he was ordered to pay in the 3 July 2024 determination. A further compliance order was sought by Mr Singh relating to instalments due to him but not paid for the period from July to December 2024.⁵

[13] The determination records that Mr Chand, who was represented at that time, advised through counsel that he lacked the resources to meet his commitments under the settlement agreement at that time.⁶

[14] By consent, the Authority made the following orders that Mr Chand must by no later than 18 February 2025:⁷

- (i) Comply with the terms of the settlement agreement certified on 13 November 2023 by paying to Mr Singh the outstanding sum of \$11,692 remaining due under that agreement;
- (ii) Comply with the Authority's determination of 3 July 2024 by paying Mr Singh \$571.55 as costs and expenses, in respect of his earlier compliance application; and
- (iii) Pay Mr Singh a further \$571.55 as costs and expenses in respect of the present application.

[15] By consent, and by order of the Authority, it was also recorded that Mr Singh's application for a further penalty against Mr Chand for failure to pay instalments due in the period from July until December 2024 was suspended.

⁵ Second Determination, above n 1, at [5].

⁶ At [10].

⁷ At [12].

[16] There was no compliance with the orders in the Authority determination by 18 February 2025.

[17] The determination was not challenged.

[18] On 27 March 2025 Mr Singh applied to the Court for urgency and abridgement of time to 14 clear days for the filing of a statement of defence to his claim pursuant to s 140(6). The application for urgency was declined in an interlocutory judgment of the Court dated 3 April 2025.⁸ The judgment records that Mr Chand was served with the statement of claim, application for urgency and Court minute on 27 March 2025. There was no response received from Mr Chand about the application for urgency within the time set out in the Court minute to do so. The judgment records that Mr Plunket advised Mr Chand had called him shortly after being served, and Mr Plunket had encouraged Mr Chand to obtain legal advice. There was no abridgement of the time within which Mr Chand was to file his statement of defence. Mr Chand was required to file and serve his statement of defence by 28 April 2025.

[19] Mr Chand did not file a statement of defence by 28 April 2025 and has not taken any steps in respect of this matter.

[20] Affidavits of service confirm that Mr Chand has been subsequently served with the notice of hearing, a further Court minute, a list of issues, an affidavit of Mr Singh affirmed 30 May 2025 and submissions.

[21] There is an email from Mr Plunket to Mr Chand annexed to Mr Singh's affidavit dated 20 May 2025. Mr Plunket asks Mr Chand in the email amongst other matters whether he is agreeable to being served documents regarding the Employment Court process by email. An email dated 21 May 2025 was sent to Mr Plunket from the email address of a person other than Mr Chand, but Mr Chand's electronic signature was at the bottom of the email. The email states that there was an appointment with a lawyer the following day at 12 pm and that Mr Plunket would be advised. There was a follow up email from Mr Plunket dated 23 May 2025. Mr Singh states in his affidavit that to the best of his knowledge there was no response.

⁸ *Singh v Chand* [2025] NZEmpC 67.

[22] A process server in an affidavit sworn on 14 July 2025 stated that on 10 July 2025 he served Mr Chand at his home address with a cover letter and submissions. The affidavit provides that Mr Chand confirmed he was the person named as the defendant and accepted service. He further consented to the process server taking a photograph of him with the documents, which is annexed to the affidavit.⁹

[23] The Court is satisfied that service has taken place and that there is awareness on the part of Mr Chand about this matter. Mr Chand was called at the hearing but did not appear. The hearing proceeded on the basis of Mr Singh's affidavit evidence and legal submissions.

[24] The Court is satisfied that Mr Chand has failed to comply with compliance orders made by the Authority under ss 137(1)(a)(iii) and (b) of the Act.

Should the Court impose a fine and, if so, what should the amount of the fine be?

[25] A breach of a compliance order is a serious matter. An exacerbating feature is that the compliance orders were for salary and holiday payment, which are minimum entitlements. No explanation or excuses have been advanced by Mr Chand for the failure to pay the amounts ordered.

[26] The Court of Appeal in *Peter Reynolds Mechanical Ltd v Denyer*, identified the primary purpose of s 140(6) as being to secure compliance.¹⁰ The Court further noted that the section must be intended to enable the Court to impose some form of sanction for non-compliance with the compliance order.¹¹ The need to deter non-compliance by the party involved or more generally is a consideration.

[27] A range of non-exhaustive factors was indicated by the Court of Appeal in *Peter Reynolds*, in assessing whether a fine should be imposed and the amount of a fine.¹² This includes the circumstances of any default, whether steps have been taken to address non-compliance and the need for deterrence. A factor to consider is whether

⁹ Affidavit of service provided on the day of the hearing.

¹⁰ *Peter Reynolds Mechanical Ltd v Denyer* [2016] NZCA 464, [2017] 2 NZLR 451, [2016] ERNZ 828 at [75].

¹¹ At [75].

¹² At [76].

the breach is a first or repeated breach by the defendant. The respective circumstances of the employer and employee are relevant, including financial considerations. There should also be consideration of other similar cases for consistency, and proportionality is another factor that may involve consideration of the sum at issue.

Was the default deliberate or wilful?

[28] The settlement agreement was certified on 13 November 2023, but the only payments recorded by the Authority in its first determination made to Mr Singh were part payments for December 2023 and January 2024 instalments. Notwithstanding orders made in two determinations to comply with the payments under the settlement agreement, there has been a failure to comply with the obligations. At the time of the Authority determinations, Mr Chand was represented.

[29] There has been service of documents associated with this proceeding on Mr Chand. There is an absence of evidence from Mr Chand about why there has been a failure to pay the money ordered. The Court can infer the failure to make the payments is deliberate and intentional.

Is the default ongoing?

[30] The default is ongoing and has not been remedied.

First or repeated breach?

[31] Mr Chand has not complied with two separate compliance orders of the Authority. There is no evidence in other proceedings that he has breached other orders of the Court or Authority, so this is the first instance of a breach.

Mr Chand's circumstances and ability to pay

[32] The Court does not have a full picture of Mr Chand's circumstances and ability to pay, as he has not participated in the Court process. The second Authority determination refers to Mr Chand presently lacking the resources to meet his commitments under the settlement agreement. Orders were then made by consent

enlarging the time for payments to be made under the settlement agreement. The Court infers from this that difficulties with payment were anticipated to be short lived.

[33] There is information from the affidavit evidence of Mr Singh filed for this matter that Mr Chand jointly owns a property. A copy of a record of title for an Auckland property is annexed to the affidavit, which shows the registered owners of that property are Mr Chand and another person.¹³ Mr Singh states in his affidavit that Mr Chand has continued to operate a business. It appears to operate out of the same company premises that the employer company operated from, and Mr Chand holds shares in the new company.

[34] There is no information to support that Mr Chand is not able to pay a fine.

Mr Singh's circumstances

[35] Mr Singh states in his affidavit that he was employed by the employer company under the Accredited Employer Work Visa scheme. By way of background to the settlement agreement, he states in his affidavit that he was not paid correctly for wages and holidays during his employment in 2020 and 2021 and that caused him hardship. This includes a period of homelessness, which impacted his family, including a young child.

[36] The settlement agreement was entered into, and Mr Singh considered the matter was resolved and at an end. Mr Singh stated in his affidavit that at the current time he is still struggling financially and that being paid what he was owed would have made a difference. He further stated that the failure to pay has caused him financial and mental distress. I accept that the failure to comply as ordered by the Authority with the payments agreed to in the settlement agreement has caused distress for Mr Singh.

¹³ Mr Singh in his affidavit refers to the other person who is the registered owner of that property as Mr Chand's wife.

Deterrence

[37] Despite Mr Singh's efforts, including the seeking of two compliance orders from the Authority, he has not been unable to secure payment of the balance of the amount still owing to him for salary and holiday pay in the settlement agreement.

[38] There is a need to deter breaches of orders of the Authority and to encourage compliance, particularly where the breaches involve minimum entitlements and there is some vulnerability on the part of the employee. The nature of the breaches in this matter is an aggravating feature.¹⁴

[39] It is appropriate in this matter to impose a sanction under s 140(6) and order that Mr Chand be fined.

[40] The maximum fine that can be imposed is \$40,000.

Quantum

[41] The quantum of the fine should be consistent with comparable cases. Where there have been no steps taken to address the breach, there are no issues about capacity to pay and no history of previous breaches, fines start at approximately \$10,000.¹⁵

[42] Mr Plunket submits that the fine imposed should be considerably higher than \$10,000 and that a fine of \$22,500 should be imposed. He refers to *McMillan v Resque Corporation 20/20 Ltd*, where a fine was imposed by the Court of \$15,000 as a comparable but, he submitted, less egregious case.¹⁶

[43] In *McMillan*, there was also a failure to comply with the terms of a settlement agreement when ordered to do so by the Authority. The employer company did not engage and there was no attempt to remediate the breach. There was no previous

¹⁴ The seriousness of failure to pay minimum entitlements is underlined by the fact that it can now be seen in some circumstances as a crime under s 220AA of the Crimes Act 1961.

¹⁵ *McKay v Wanaka Pharmacy Ltd* [2021] NZEmpC 79, [2021] ERNZ 304; *Cooper v Phoenix Publishing Ltd* [2020] NZEmpC 111, [2020] ERNZ 332; *Cousens v Star Nelson Holdings Ltd* [2022] NZEmpC 30; *Wilson v AZ Scaffolding (2017) Ltd* [2025] NZEmpC 21.

¹⁶ *McMillan v Resque Corporation 20/20 Ltd* [2023] NZEmpC 76, [2023] ERNZ 308.

record of failing to meet orders of the Authority and the financial circumstances of the employer were unknown. The unpaid amount comprised outstanding wages and holiday pay of \$26,000 gross. A significant adverse effect of non-payment on the employee was recorded in the judgment. It was stated in the judgment that “it is difficult to imagine something more significant to an employee than a failure to pay wages and holiday pay.” The Court found that the circumstances in *McMillan* took matters outside of the range of fines imposed in *Cooper v Phoenix Publishing Ltd* and *McKay v Wanaka Pharmacy Ltd*.¹⁷ It appears the main aspect that took *McMillan* out of the usual range was the nature of the breaches, being a failure to pay holiday pay and wages.

[44] Mr Plunket submits that this matter is more egregious than *McMillan* and a higher fine should be imposed. This is because Mr Singh was a relatively vulnerable employee when the breaches occurred, that the breaches had a significant impact on him and the non-compliance based on the underlying matters has gone on for a longer period. Mr Plunket referred to the fine imposed by the Court in *Nathan v Broadspectrum Ltd* of \$25,000 but acknowledged the circumstances that resulted in a fine at that level do not neatly align with this. The fine imposed in *Nathan* was a second fine regarding the same matter and concerned a breach of an order for compliance with a reinstatement order. The circumstance in that matter are distinguishable from this.

[45] Mr Singh is a relatively vulnerable employee who was not paid his minimum entitlements. That is a matter to be weighed in the measure of a fine with other factors. The breaches did have a significant adverse impact on Mr Singh, but it was found the employee in *McMillan* was also significantly impacted. Mr Singh entered into a settlement agreement in November 2023. Despite two Authority determinations ordering compliance in 2024 and early 2025, the amounts remain outstanding in 2025. The settlement agreement in *McMillan* was dated 15 April 2021, and a compliance order was made by the Authority on 15 November 2021. As at the date of the judgment on 23 May 2023, there had been no compliance with the Authority’s compliance orders. The period of non-compliance in *McMillan* does not appear less egregious.

¹⁷ At [28]. See *Cooper*, above n 15 and *McKay*, above n 15.

[46] The Court of Appeal in *Reynolds* stated that one of the factors relevant to the measure of a fine is proportionality, requiring some consideration of the sums outstanding. The amount outstanding in *McMillan* of \$26,000 for wages and holiday pay is more than double that in this matter. The amount for which compliance was ordered in this matter was \$11,692 for payments due under the settlement agreement and \$571.55 for costs. It is still a sizable amount to Mr Singh.¹⁸

[47] In *Domingo v Suon*, there was a failure to comply with a compliance order made in the Authority. The defendant had been ordered to pay \$6,944.40 for unpaid wages and holiday pay, a penalty of \$1000 and reimburse a filing fee.¹⁹ The employee in that matter was a vulnerable migrant worker. The Court imposed a fine of \$11,000 where the plaintiff had not been paid minimum entitlements. The unpaid amounts of wages and holiday in this matter are higher than those in *Domingo*.

[48] Matters that have been considered and weighed include the ongoing non-compliance, lack of anything to suggest that Mr Chand is not able to pay a fine, the corresponding harm occasioned to Mr Singh because of the breaches and their nature and Mr Singh's relative vulnerability. A suitable and proportionate fine is \$13,000.

Should the Court direct that the whole or any part of the fine be paid to Mr Singh?

[49] There is a discretion under s 140(7) of the Act for the Court to direct that the whole or any part of the fine may be paid to the employee concerned.

[50] Mr Singh has had to bear the responsibility for making this application. His claim for costs, which will be dealt with shortly, has been taken into account. To order a payment of the whole of the penalty to Mr Singh would not properly reflect that orders of the Authority have been breached. Payment of at least part of the fine to the Crown is required to address that aspect.

¹⁸ A further amount for costs was ordered by the Authority but is not the subject of a compliance order.

¹⁹ *Domingo v Suon* [2017] NZEmpC 23, [2017] ERNZ 82 at [3].

[51] In the exercise of the Court's discretion, I consider this is an appropriate case to order that Mr Singh is entitled to be paid 60 per cent of the fine, which is \$7,800. I direct the other portion of the fine, in the sum of \$5,200, is to be paid to the Crown.

Is the Court able to order interest payable on the amounts outstanding?

[52] Mr Singh seeks interest from the date each respective instalment payment fell due under the settlement agreement. There is no order in the Authority determinations for interest on the outstanding amounts due under the settlement agreement. There is nothing in the determinations to support that interest was claimed.

[53] Clause 14 of the third schedule to the Act empowers the Court as it thinks fit in any proceedings for the recovery of money to order that the amount awarded include interest.

[54] A proceeding under s 140(6) of the Act where a person has failed to comply with a compliance order made under s 137 of the Act is not a proceeding for the recovery of money. It is a proceeding for a sanction for a failure to comply with a compliance order made by the Authority.

[55] Although Mr Plunket submitted that an order awarding interest could be made by the Court exercising its equity and good conscience jurisdiction pursuant to s 189 of the Act, that would be inconsistent with the Act and not permissible.

[56] Interest is not ordered in this matter.

Should there be leave to apply for further orders under s 140(6) if there is continued non-compliance with the Authority compliance orders?

[57] Leave was sought to return to the Court if there was continued non-compliance with the Authority's orders for compliance by a date specified by the Court for further relief.

[58] The statement of claim referred to the nature of further relief being an order that the property of Mr Chand be sequestered under s 140(6)(e) of the Act and an order that Mr Chand be imprisoned for a term not exceeding three months under s 140 (6)(c).

[59] The Court of Appeal in *Reynolds* agreed with the Employment Court that both imprisonment and sequestration should be sanctions of last resort for non-compliance.²⁰ The exploration of other avenues in the meantime to enforce the orders may be relevant.

[60] Leave is reserved for Mr Singh to apply to the Court for orders for further relief if the amounts ordered by the Authority to be paid are not paid by 27 August 2025.

Costs and disbursements

[61] Mr Singh seeks costs in the sum of \$26,290 under the Court's Guideline scale Category 2B and disbursements. Mr Plunket submits that actual costs exceed this sum by a modest amount, so scale costs are sought. Costs were provisionally fixed on a 2B basis at the judicial settlement conference.

[62] Mr Singh was the successful party and is entitled to consideration of costs. The guideline scale is a factor in the exercise of the Court's discretion as to the amount of costs to award. The Court in the exercise of its discretion considers that the nature of these proceedings means the time allocation for most steps taken should be assessed at Category 2 Band A.

[63] The time allocation for commencement of "other proceeding" is appropriately assessed at 1.6 days. The preparation for the first directions conference, the filing of the memorandum and appearance at the directions conference are each appropriately assessed at 0.2 days. There was only one significant affidavit filed. It included annexures relating to Mr Chand's financial circumstances but was not otherwise lengthy. Two service affidavits were prepared by an employee of Mr O'Brien. A reasonable time allocation for preparation of the affidavits is 1.5 days.

[64] Time for preparation of written submissions is claimed under the same step for preparation of the list of issues, agreed facts, authorities and common bundle. Submissions are not preparation referred to under that step. An appropriate and

²⁰ *Peter Reynolds Mechanical Ltd*, above n 10, at [56].

reasonable time allocation for preparation of a list of issues is 0.2 of a day, as preparation was not required for the other matters referred to at that step.

[65] A further two days is claimed for preparation for hearing. Submissions are appropriately claimed under preparation for hearing as the hearing proceeded on the basis of submissions and the affidavit evidence. A reasonable time allocation in the circumstances is one day. This takes into account the time already allocated for preparation of the affidavit. The time occupied by the hearing was a quarter of a day.

[66] An award of costs that reflects the nature of the proceeding and the steps reasonably required is \$12,308.50.

[67] The disbursements claimed for reimbursement are the filing fee and service costs. They are related to the proceeding.

[68] The filing fee is \$337.

[69] There is an email annexed to Mr Singh's affidavit dated 20 May 2025 putting Mr Chand on notice that a failure to accept documents by email would lead to associated costs being sought. There were four separate service disbursements. Mr Plunket filed a memorandum after the hearing confirming the service cost for services effected on 10 July 2025. The fact of service is supported by four affidavits of service. Invoices for the amounts claimed are annexed to the affidavit of Mr Singh, and an invoice is attached to the memorandum of counsel dated 15 July 2025:

- (a) Service of the proceedings in person on 28 March 2025 = \$368 (with urgency).
- (b) Service of minutes, notice of hearing, list of issues and affidavit of Mr Singh by registered post on two occasions 27 May and 30 May 2025 ($\$70.10 \times 2$) = \$140.20.
- (c) Service of submissions in person = \$195.50.

[70] There is an issue whether the final service in person was reasonably necessary. In the context of proceedings where Mr Chand had taken no steps and had not agreed to service by email, personal service close to the hearing date assisted to establish that Mr Chand had knowledge of the proceedings.

[71] The disbursements are allowed in full in the sum of \$1,040.70.

Outcome

[72] Mr Chand has failed to comply with compliances orders made by the Authority under s 137 and a fine of \$13,000 has been imposed under s 140(6) of the Act.

[73] Mr Chand is ordered to pay \$7,800 of the fine to Mr Singh and \$5,200 to the Crown.

[74] Interest is not ordered payable on the amounts owing for which the Authority ordered compliance.

[75] Leave is reserved for Mr Singh to apply to the Court for further sanctions under s 140(6) of the Act after 27 August 2025.

[76] Mr Chand is ordered to pay to Mr Singh costs in the sum of \$12,308.50 and disbursements in the sum of \$1,040.70.

Helen Doyle
Judge

Judgment signed at 11.40 am on 6 August 2025