

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

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

**[2025] NZEmpC 59  
EMPC 119/2025**

IN THE MATTER OF            a compliance order  
AND IN THE MATTER OF    an application for urgency  
BETWEEN                      HEALTHALLIANCE NZ LIMITED  
                                         Plaintiff  
AND                                GARTH CUNNINGHAM  
                                         Defendant

Hearing:                      20 March 2025  
                                         (Heard by telephone)

Appearances:                R Upton, counsel for plaintiff  
                                         G Cunningham in person

Judgment:                    26 March 2025

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**INTERLOCUTORY JUDGMENT JUDGE M S KING  
(Application for urgency)**

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[1] This judgment resolves an application for urgency brought by the plaintiff, healthAlliance NZ Ltd. healthAlliance has filed a statement of claim pursuant to s 140(6) of the Employment Relations Act 2000 (the Act) alleging that the defendant, Garth Cunningham, is in breach of compliance orders. healthAlliance seeks relief in the form of:

- (a) a stay being granted over all proceedings filed by Mr Cunningham in both the Court and the Employment Relations Authority (the Authority)

until he complies with the compliance orders made in both the Authority and the Court;<sup>1</sup>

- (b) a fine of up to \$40,000;<sup>2</sup>
- (c) indemnity costs; and
- (d) any other relief the Court believes just.

*Breach of the Authority's compliance order*

[2] Mr Cunningham is in breach of a compliance order made by the Authority on 15 November 2024 under s 137 of the Act, where he was ordered to pay healthAlliance the sum of \$10,000 plus interest within 14 days.<sup>3</sup>

[3] Mr Cunningham subsequently filed a challenge to the Authority's determination, and he applied to stay the compliance order. Mr Cunningham has also applied to the Authority to reopen its investigation into the issue of costs, which underlies the compliance order made by the Authority.

[4] On 24 January 2025 the stay application was declined by the Court.<sup>4</sup> On 19 March 2025 the Court issued a further judgment where it held that Mr Cunningham's challenge did not disclose a reasonably arguable cause of action. The Court stayed the challenge pending the application to reopen the Authority's investigation into the costs order. The Court also ordered that Mr Cunningham's challenge would be dismissed if the application for reopening was unsuccessful.<sup>5</sup>

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<sup>1</sup> Employment Relations Act 2000, s 140(6)(a).

<sup>2</sup> Section 140(6)(d).

<sup>3</sup> *healthAlliance NZ Ltd v Cunningham* [2024] NZERA 680 (Member Craig) at [37].

<sup>4</sup> *Cunningham v healthAlliance NZ Ltd* [2025] NZEmpC 6.

<sup>5</sup> *Cunningham v healthAlliance NZ Ltd (No 2)* [2025] NZEmpC 51.

*Breach of the Court's compliance order*

[5] Mr Cunningham is also in breach of a compliance order made by the Court on 20 February 2025 to pay healthAlliance the sum of \$7,311.50 plus interest within 14 days of the judgment.<sup>6</sup>

[6] healthAlliance has applied for the Court to deal with these proceedings as a matter of urgency.

**Urgency is not granted**

[7] The Court has a broad discretion to accord urgency to a proceeding. Schedule 3 cl 21 of the Act provides that if the Court is satisfied that it is necessary and just to do so, it may order that any proceeding be heard by the Court as soon as practicable.

[8] On 20 March 2025 I convened a telephone hearing with the parties on the application for urgency.

[9] healthAlliance submitted that urgency should be granted on the basis that Mr Cunningham is flouting the compliance orders made by the Authority and the Court. It submitted that any failure to grant its application for urgency would in effect condone Mr Cunningham's conduct.

[10] Mr Cunningham accepts that he has not complied with either compliance order. He put forward the novel argument that because he had not complied with payment of the amounts ordered within the timeframe set by the Authority or the Court, the orders were no longer capable of compliance once that time had expired. To put matters bluntly, this is a nonsensical argument. From the date ordered, the amounts are and remain immediately payable, and interest continues to accrue on the amounts awarded. Any failure to pay the amounts ordered is a breach of the order for which Mr Cunningham is liable for sanctions.

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<sup>6</sup> *Cunningham v healthAlliance NZ Ltd* [2025] NZEmpC 24.

[11] Mr Cunningham has also raised his financial circumstances and his ability to pay the awards as a reason for non-payment. The Court observes that Mr Cunningham has previously raised this issue in other applications; however, he provided the Court with incomplete evidence of his financial position.<sup>7</sup> Mr Cunningham may wish to consider providing more fulsome evidence of his financial position if he seeks for the Court to have regard to his financial circumstances and his ability to pay in these proceedings.

[12] Standing back, I do not consider that urgency is necessary on this matter for a number of reasons. First, I do not consider I have jurisdiction to issue a stay to prevent the Authority determining any matter. Section 188(4) of the Act provides that it is not a function of the Court to advise or direct the Authority in relation to its investigative role, powers, and jurisdiction or in relation to the procedure it adopts.<sup>8</sup>

[13] Second, even if urgency was granted, any stay could only apply to the substantive proceedings before the Court. In relation to these proceedings, the Court has issued a verification order requiring healthAlliance to provide an affidavit responding to the documents sought in Mr Cunningham's 15 August 2024 notice requiring disclosure. The verification order was made in the same judgment as the Court's compliance order. Mr Upton confirmed at the telephone hearing that healthAlliance has not complied with the verification order. It appears that both parties have failed to act with any urgency to comply with the orders made in the Court's 20 February 2025 judgment, which was issued about a month ago. This further undermines the current application for urgency.

[14] Weighing all of the matters before me, I do not consider it necessary or just to grant the application for urgency.

[15] I direct Mr Cunningham to file his statement of defence within 30 clear days of the statement of claim being served on him on 19 March 2025.

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<sup>7</sup> *Cunningham v healthAlliance NZ Ltd* [2024] NZEmpC 58 at [7], [8] and [15].

<sup>8</sup> *Citadel Capital Ltd v Miles* [2024] NZEmpC 51, [2024] ERNZ 126 at [7]–[11]; and *Smith v Sovereign Ltd* EmpC Auckland AC10/04, 1 March 2004 at [8]–[11].

[16] Mr Cunningham has successfully defended the application for urgency and is entitled to costs. If this issue cannot be agreed upon between the parties then he is to file and serve memoranda within 21 days; healthAlliance will have 14 days to file and serve any response, following which Mr Cunningham will have seven days in which to file and serve any memoranda strictly in reply.

M S King  
Judge

Judgment signed at 12.30 pm on 26 March 2025