

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2016] NZERA Auckland 220
5628306

BETWEEN SCOTT BREW
 Applicant

A N D COWBOYS BAR LIMITED
 Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Kerry Single for Applicant
 No appearance by or for Respondent

Investigation Meeting: 4 July 2016 at Auckland

Date of Determination: 4 July 2016

ORAL DETERMINATION OF THE AUTHORITY

Non-appearance of respondent

[1] Cowboys Bar Limited (Cowboys) failed to file a statement in reply to the statement of problem and also failed to attend the investigation meeting today.

[2] I am satisfied that Cowboys was properly served with the statement of problem and subsequent correspondence from the Employment Relations Authority together with a notice of the investigation meeting.

[3] Being satisfied that Cowboys was properly served with the proceedings and notice of investigation meeting, I proceeded to investigate the employment relationship problem of the applicant, Mr Scott Brew, in the absence of Cowboys.

The investigation meeting

[4] Mr Brew attended the investigation meeting and gave evidence under oath.

[5] As allowed under s.174 of the Employment Relations Act 2000 (the Act), this determination does not set out all of the evidence; relevant facts and legal issues are set out along with the Authority's conclusions.

Employment relationship problem

[6] On 4 April 2016, a Record of Settlement (the settlement) was signed under s.149 of the Employment Relations Act 2000 (the Act). The applicant Mr Brew, and the respondent, Cowboys were parties to the settlement. The settlement was signed by Mr Brew and by Mr Nic Gray, Director of Cowboys.

[7] The settlement was signed by a mediator employed by the Ministry of Business, Innovation and Employment (MBIE).

Issue

[8] The issue brought to the Authority by Mr Brew relates to non-payment by Cowboys of sums agreed to be paid by it and failure to comply with other terms of settlement.

[9] The settlement states:

2. Cowboys...shall pay Scott Brew within 21 days of the date hereof, the compensatory sum of \$10,600 in terms of section 123(1)(c)(i) of the Employment Relations Act 2000....

3. Cowboys...shall pay Scott Brew within 21 days of the date hereof outstanding holiday pay of \$4700.

4. Cowboys...shall pay Employment Advocacy Service within 21 days of the date hereof, upon receipt of an invoice, contribution to legal costs of \$2500 inclusive of GST....

[10] The settlement was certified under s.149 of the Act by the mediator. That certification confirmed that, before signing the agreement, the parties were advised and accepted they understood the effect of s.149(3) of the Act which states that the agreed terms of settlement:

1. Is final and binding of and enforceable; and
2. Could not be cancelled; and

3. Could not be brought before the Authority or the Court for review or appeal, except for the purposes of enforcing those terms.

[11] On 1 June 2016, an application for a compliance order was filed in the Authority by Mr Brew claiming that despite request, Cowboys had failed to comply with the terms of settlement and pay him the monies owing under the settlement.

[12] Cowboys has not filed a statement in reply. Mr Brew says the sums payable under the settlement have not been paid and remain outstanding.

[13] I am satisfied that Cowboys has not complied with the terms of the settlement.

Determination

[14] I therefore make an order that Cowboys is to pay Mr Brew within seven (7) days of the date of this determination, the sum of \$10,600 in compensation, outstanding holiday pay of \$4,700 together with a contribution of \$2,500 in legal costs.

[15] These sums are to be paid by Cowboys directly into Mr Brew's bank account, details of which have been provided.

Interest

[16] The Authority may, under clause 11 of the second schedule to the Act, if it thinks fit order the payment of interest at the rate prescribed under section 87(3) of the Judicature Act 1908. I intend to do so from the time that Cowboys was to pay Mr Brew on 25 April 2016 until the date of payment.

[17] I order Cowboys to pay interest on the above sums at the rate of 5% per annum from 25 April 2016 until the date of payment.

[18] For the information of Cowboys, failure to comply with an order such as this one made by the Authority under s.137 of the Act, may provide a basis for an application to be made by Mr Brew to the Employment Court. Where the Court is satisfied that any person has failed to comply with a compliance order under s.137, the Court may, under s.140 of the Act, order remedies, including an order that the person in default be sentenced to imprisonment for a term not exceeding three months and/or a fine not exceeding \$40,000.

Costs

[19] I order Cowboys to pay costs of \$170 in respect of the investigation meeting today and to reimburse Mr Brew the Authority's \$71.56 filing fee within seven (7) days of the date of this determination.

Certificate of determination

[20] I direct that pursuant to Regulation 26 of the Employment Relations Authority Regulations 2000, Mr Brew be provided with a certificate of determination, sealed with the seal of the Authority, recording respectively that Cowboys is ordered within 7 days of this determination to pay Mr Brew the sum of \$10,600 pursuant to s.123(1)(c)(i) of the Act, the sum of \$4,700 outstanding holiday pay, the sum of \$2,500 in legal costs together with interest on these sums at the rate of 5% per annum from 25 April 2016 until the date of payment. Cowboys is also ordered within 7 days of this determination to pay costs of \$170 and filing fee of \$71.56 as indicated in paragraph [19].

Anna Fitzgibbon
Member of the Employment Relations Authority