

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2017] NZERA Wellington 116
3019672

BETWEEN CHANELLE BALOGH
 Applicant

AND SALT PODS LIMITED
 Respondent

Member of Authority: Michele Ryan

Representatives: Bede Laracy for the Applicant
 Las Brown on behalf of the Respondent

Investigation Meeting: 20 November 2017

Determination: 24 November 2017

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] On 24 August 2017 Ms Chanelle Balogh and Salt Pods Limited (SPL) agreed to terms contained in a Record of Settlement pursuant to s 149 of the Employment Relations Act. The Record of Settlement was forwarded to the Mediation Service and certified the following day by a mediator.¹

[2] Clause 2 of the Record of Settlement required SPL to pay Ms Balogh a total sum of \$10,140. The parties agree that cl. 3 required SPL to pay Ms Balogh three monthly instalment payments beginning 6 September 2017 and concluding on 6 November 2017.

[3] There is no dispute that the payments were not made.

¹ Provided by the Ministry of Business, Innovation and Employment (MBIE)

[4] Ms Balogh now seeks to have SPL comply with cl. 2 of the Record of Settlement. She also seeks penalties for its failure to comply with the Record of Settlement, and costs associated with this application as well as the filing fee.

[5] SPL did not provide a statement in reply. However, Mr Curtiz Brown, (also known as Las Brown) the sole director of SPL, attended a case management call and the Authority's investigation meeting. He says SPL remains willing to pay the debt but that it cannot pay the debt in full at this juncture because it does not have the funds.

[6] SPL requests further time to comply with the Record of Settlement. To this end Mr Brown proposes to have SPL pay Ms Balogh \$2,000 per month until the debt is paid. At the Authority's meeting Mr Brown undertook to make the first payment that day.

[7] Ms Balogh expressed doubts about the proposal where SPL had not previously complied with payments by way of instalment.

[8] It needs to be noted that SPL deposited \$2,200 into Ms Balogh's bank account at some point in the afternoon after the morning's investigation meeting. Ms Balogh, by her representative, has confirmed she has received that sum.

Discussion and determination

[9] Section 137 of the Employment Relations Act empowers the Authority to order a party to comply with any terms of settlement that may be enforced pursuant to s 151.

[10] At issue is whether an order for immediate compliance should be made or whether SPL should be ordered to meet the debt by instalment payments.

[11] Mr Brown provided the Authority with several documents to demonstrate SPL's current financial position, including a range of invoices for utilities covering the period June to November 2017, and a bank statement for the period between mid-August and mid-November. The bank statement reflects SPL is under some financial strain and is barely breaking even.

[12] When questioned about the possibility of obtaining a loan Mr Brown said SPL had attempted to obtain short term loans but had been unsuccessful with its

approaches to lending services. He accepts that SPL has capital assets of value but says if these were liquidated SPL could no longer trade in its core business. Mr Brown advised that SPL is likely to receive increased business over the impending summer period and be more able to repay the debt.

[13] Section 138(4A) of the Act further provides that the Authority may order compliance, in respect to payment of a sum of money to an employee, by ordering payment by instalments “*but only if the financial position of the employer requires it*”.

[14] Having considered all the evidence, including SPL’s recent part-payment and its current financial position, an order for compliance by payment by instalments (and for the purpose of preventing further ongoing non-compliance) is required where compliance is unlikely to occur by alternative means. The order is a pragmatic response to SPL’s financial situation and where I wish to enable SPL to pay Mr Balogh the monies it owes her.

[15] Accordingly an order for compliance associated with this portion of Ms Balogh’s claim is made, and further particularised at para [18].

[16] Ms Balogh seeks a penalty. Pursuant to s138(5) I consider it appropriate to adjourn Ms Balogh’s claim to enable the compliance order to be complied with. The question as to whether a penalty should be awarded will be revisited and determined (by Ms Balogh activating the claim) at the conclusion of the time period apportioned to allow SPL to comply with the order, or in the event SPL does not meet an ordered instalment payment. Section 135 provides, amongst other things, that a company, that has breached a provision of the Act where a penalty may be awarded, may be liable for a penalty not exceeding \$20,000.

[17] SPL needs to be aware that the imposition of a compliance order is a serious matter. Should SPL fail to comply with any of the orders set out at para [18] Ms Balogh is entitled to pursue the breach in the Employment Court or the District Court. The Employment Court has powers to impose a fine not exceeding \$40,000, order property to be sequestered, or sentence imprisonment not exceeding 3 months.² Alternatively, a certificate of determination may be obtained from the Authority and

² Section 139 and 140(6)

enforcement obtained through the mechanisms and remedies available under the *District Courts Act 1946* and *District Courts Rules 2014*.

Compliance order

[18] Taking into account Salt Pod Limited's payment of \$2,200 on 20 November 2017, the remaining sum owed is \$7,940. To comply with the Record of Settlement Salt Pods Limited is ordered to pay Ms Balogh:³

- (i) the sum of \$2,000 on or before 20 December 2017; and
- (ii) the sum of \$2,000 on or before 20 January 2018; and
- (iii) the sum of \$2,000 on or before 20 February 2018; and
- (iv) the sum of \$1,940 on or before 20 March 2018.

Costs

[19] Salt Pods Limited is also ordered to pay a contribution to costs associated with Ms Balogh's application for a compliance order. Ms Balogh was represented by an experienced advocate. A contribution of \$500 plus the filing fee of \$71.56 is appropriate and fair. This sum must be paid on or by 31 December 2017.

Michele Ryan
Member of the Employment Relations Authority

³ Pursuant to s 138(5) and s 137(1) and s137(2)