

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AT AUCKLAND**

[2017] NZERA Auckland 123
3002011

BETWEEN MUSTAFA BHAMJI
Applicant

AND GLOBAL COVER INSURANCES LTD
Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in person
No appearance by Respondent

Investigation Meeting: 27 April 2017 at Auckland

Date of Determination: 01 May 2017

**WRITTEN RECORD OF ORAL DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

Employment Relationship Problem

[1] Mr Bhamji says that Global Cover Insurances Limited (Global Cover) has not complied with the substantive determination issued by the Employment Relations Authority on 22 September 2016¹ so he seeks a compliance order plus interest on the outstanding amounts he is owed.

No participation by Respondent

[2] Global Cover has not filed a Statement in Reply nor has it sought leave to file a Statement in Reply out of time. Global Cover did not appear at the Authority's investigation meeting and it has not communicated with the Authority about this matter.

¹ [2016] NZERA Auckland 324.

[3] Mr Bhamji's Amended Statement of Problem was served on Global Cover by a process server from Baycorp NZ Limited (Baycorp) at Global Cover's registered address for service on 20 March 2017. The Notice of Investigation Meeting was served on Global Cover by a process server from Baycorp Limited at its registered address for service on 28 March 2017.

[4] I am satisfied that Global Cover had notice of Mr Bhamji's claims and of the investigation meeting today and that it has elected not to participate in the Authority's investigation.

Global Cover's liability under the Authority's substantive determination

[5] A summary of Global Cover's obligation to pay Mr Bhamji the amounts he was awarded are recorded in paragraphs [90], [94] and [95] of the Authority's substantive determination.²

[6] Paragraph [90] of the substantive determination awarded Mr Bhamji interest at the rate of 5% on \$40,883.95 which he had been awarded as wage arrears and lost remuneration. Interest accrued at the rate of \$5.60 per day. There have been 221 days since the issuing of the substantive determination on 22 September 2016 and this compliance determination today.

[7] Total interest awarded under paragraph [90] of the substantive determination therefore amounts to \$1237.60 as at today's date.

[8] Paragraph [94] of the substantive determination sets out the various amounts Global Cover was ordered to pay Mr Bhamji in respect of each of his successful substantive claims. Global Cover's liability under paragraph [94] of the substantive determination³ is \$55,455.51.

[9] Paragraph [95] of the substantive determination⁴ set out the amount of outstanding PAYE Global Cover was ordered to pay and remit to Inland Revenue Department (IRD) on Mr Bhamji's wages together with the part of the total penalty that was to be paid to the Crown.

² Supra.

³ Ibid 1.

⁴ Supra.

[10] Global Cover's total liability under paragraph [95] of the substantive determination was \$21,751.90 PAYE to be paid to IRD plus \$2,000 penalty to be paid to the Crown bank account.

[11] Mr Bhamji says he has not received any money or any other communications from his Global Cover regarding the amounts it owes him.

Should a compliance order be issued?

[12] I am satisfied that it is unlikely that Global Cover will voluntarily meet its obligations to Mr Bhamji in the absence of a compliance order from the Authority. I therefore consider it appropriate to exercise the Authority's discretion to issue a compliance order.

[13] Accordingly, within 14 days of the date of this determination Global Cover is ordered to comply with the orders made in paragraphs [90], [94] and [95](b) of the Authority's substantive determination by paying Mr Bhamji \$56,693.11.

[14] This amount of \$56,693.11 consists of \$1237.60 interest as per paragraph [90] of the substantive determination plus \$55,455.51 under paragraph [94] of the substantive determination.

[15] In addition to the amount in paragraph [14] above, Global Cover is also ordered to comply with paragraph [95](b) of the Authority's substantive determination by paying \$21,751.90 PAYE arrears to IRD on Mr Bhamji's wages within 14 days of the date of this compliance determination.

[16] The Authority is also informed that Global Cover has not paid any the part of the penalty that has been awarded to the Crown. However, the Crown is not a party to this compliance order application by Mr Bhamji so I do not make a compliance order against Global Cover relating to the order in paragraph [95](a) of the substantive determination regarding the \$2,000 of the penalty that was to be paid to the Crown.

Costs

[17] Mr Bhamji has represented himself in these proceedings so there is no issue regarding legal costs.

[18] However Mr Bhamji seeks reimbursement of his filing fee for this compliance order application.

[19] Mr Bhamji has been put to the expense of pursuing a compliance order so Global Cover is also ordered to reimburse him \$71.56 for his filing fee for this compliance application. Global Cover is to reimburse Mr Bhamji \$71.56 for his filing fee within 14 days of the date of this determination.

Interest

[20] Global Cover has effectively had the use of Mr Bhamji's money without any cost to it. Global Cover also further delayed Mr Bhamji's ability to seek compliance by pursuing Employment Court proceedings that were subsequently dismissed for want of prosecution due to its failure to comply with Employment Court directions.

[21] I consider this is an appropriate case in which to exercise the Authority's discretion to award interest.

[22] There are two calculations that need to be done to determine interest liability. The first relates to the interest that was awarded on the wage arrears and lost remuneration component of the amounts Mr Bhamji was awarded in the substantive determination. That amounts to \$1237.60 and has already been accounted for in paragraphs [6], [7] and [14] of this compliance determination.

[23] The second calculation relates to the remaining amounts Mr Bhamji was awarded in the substantive determination but which were not subject to interest at that stage. That covers the amounts awarded in paragraphs [94](b) and [94] (d)-(f) of the substantive determination⁵ which total \$14,571.56.

[24] Global Cover was ordered to pay Mr Bhamji the amounts he had been awarded in the substantive determination within 28 days of that determination, meaning these amounts were due to have been paid in full by 21 October 2016. Nothing has been paid at all.

⁵ These amounts total \$14,571.56 consisting of \$10,000 distress compensation, \$2,000 part penalty, \$2,500 legal costs, \$71.56 filing fee reimbursement for the substantive matter.

[25] I consider it appropriate to award Mr Bhamji interest at the current prescribed rate of 5% from 21 October 2016 to date on the \$14,571.56 as per paragraph [23] above. This amounts to interest of \$386.00 (193 days at \$2.00 per day).

[26] Global Cover is also ordered to pay 5% interest from the date of this determination on the total amount outstanding under this compliance determination until that amount has been paid in full.

[27] The total amount outstanding under this compliance determination is \$57,150.67 so going forward interest currently accrues on that amount at the rate of \$7.83 per day⁶ from 01 May 2017 onwards.

Orders

[28] Within 14 days of the date of this compliance determination, Global Cover is ordered to:

- a. Comply with the orders made against it in paragraphs [90], [94] and [95](b) of the Authority's substantive determination dated 22 September 2016. Such compliance requires it to pay Mr Bhamji \$56,693.11 and the IRD \$21,751.90 PAYE on behalf of Mr Bhamji;
- b. Reimburse Mr Bhamji \$71.56 for his filing fee on this compliance application;
- c. Pay Mr Bhamji interest of \$386.00 on the amounts that should have been paid to him by 21 October 2016 as per the substantive determination but which remain outstanding;
- d. Pay Mr Bhamji interest of \$109.62 for the period 01 May 2017 – 15 May 2017 as per paragraph [27] of this compliance determination.

⁶ \$57,150.67 x 5% = \$2,857.53 divided by 365.

[29] These orders mean that by 15 May 2017 Global Cover must have paid Mr Bhamji \$57,260.29 and the IRD \$21,751.90 (on Mr Bhamji's behalf). Any amount that has not been paid by 15 May 2017 will continue to accrue interest at the rate of 5% per annum until the entire amount has been paid.

Rachel Larmer

Member of the Employment Relations Authority