

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 71/09
5158963

BETWEEN KIM BLISS
 Applicant

AND IDAS DISTRIBUTORS
 LIMITED
 Respondent

Member of Authority: Philip Cheyne

Representatives: Brad McDonald, Counsel for the Applicant
 James Loughnan, Advocate for the Respondent

Investigation Meeting: 29 May 2009 at Christchurch

Determination: 2 June 2009

DETERMINATION OF THE AUTHORITY

[1] Ms Bliss and Idas Distributors Limited reached a settlement of an employment relationship problem with the assistance of mediation. It required Idas to make a payment within seven days. However Idas did not do this and Ms Bliss lodged this application seeking a compliance order, a penalty and costs.

[2] Idas did not lodge a statement in reply. However, Mr Loughnan who is a director and shareholder of Idas, attended at the scheduled time of 2pm and participated in today's investigation meeting.

[3] There is a signed and dated record of settlement pursuant to s.149 of the Employment Relations Act 2000. It required Idas to make a payment to Ms Bliss no later than 16 March 2009. That did not happen but an accommodation was reached between Mr Loughnan and counsel for Ms Bliss that the payment would be made by 31 March 2009. As part of this arrangement, Idas was warned that if payment was not

made then the settlement would be enforced causing more costs. Nothing more was heard from Idas so this application was lodged on 16 April 2009.

[4] Mr Loughnan confirmed that he received the statement of problem that was sent by the Authority to the company's registered office. He says that he spoke to a human resources consultant (Dick Knapp) who said he would reply. On 5 May 2009 the Authority support officer spoke to Mr Loughnan who promised to send a statement in reply that day by fax. There was no mention of Mr Knapp's involvement. In evidence Mr Loughnan says after his phone discussion with the support officer he spoke to Mr Knapp to arrange for him to lodge the reply. When still nothing was received from or on behalf of Idas an investigation meeting was scheduled and the notice of meeting was served on the company on 14 May 2009. On 26 May 2009 the Authority received by email from Mr Knapp an application for an adjournment on the basis that he had just been instructed the previous afternoon, that he was otherwise committed at the scheduled meeting time, that the payment had been made to Ms Bliss and that he anticipated that the matter would take a full meeting day with the respondent to call three witnesses.

[5] I was not prepared to adjourn the investigation meeting as Idas had had plenty of time to organise itself to respond properly. As it has transpired, the matter has been investigated in under an hour.

[6] I have already noted above some of the things said by Mr Loughnan at today's investigation meeting. In addition, and by way of explaining the failure to make the payment to Ms Bliss until 22 May 2009, Mr Loughnan told me that he was dealing with redundancies for a number of staff, that the business cashflow meant no money was available and that he had to sell some personal items before he could make the required payment. To support this, Mr Loughnan showed me some cashflow printouts. However, that information demonstrates that the company did have funds available to pay Ms Bliss. When I pointed that out to Mr Loughnan he accepted that was the case.

[7] I am satisfied that Idas breached the record of settlement in circumstances where it could and should have complied with the settlement or at least the informal arrangement for payment by the end of March 2009. Idas is therefore liable to a penalty.

[8] The best that can be said for Idas is that it has now paid the money. However, that happened only a week ago. It is therefore a reason to reduce rather than avoid any penalty for breach of s.149(4) of the Employment Relations Act 2000. I do not accept that Mr Loughnan was so occupied in dealing with redundancies that the company could not have met its obligation to Ms Bliss nor that its financial situation prevented it from doing so. The picture that emerges is that Idas decided to defer paying Ms Bliss for its own benefit. However, Idas was not lawfully able to do this because of the commitment made when the record of settlement was signed. It is important to send a message that voluntary settlements once made must be complied with in a timely manner. Anything less would undermine confidence in mediation as the primary mechanism for resolving employment relationship problems.

[9] I am told that Ms Bliss has been significantly affected by the continuation of this dispute so that too merits the imposition of a penalty on Idas.

[10] In these circumstances I impose a penalty of \$1,000.00 on Idas Distributors Limited and order the whole of that sum to be paid to Ms Bliss.

[11] There is also a claim for costs. I see no reason why Ms Bliss should have to personally meet any significant part of the costs incurred by Idas failing to do what it should have done. I will order Idas Distributors Limited to pay a further \$1,200.00 as a contribution to costs.

Philip Cheyne
Member of the Employment Relations Authority